


MAIN FILE 

**RCRA HAZARDOUS WASTE PERMIT
RENEWAL APPLICATION
FOR THE
BATON ROUGE SMELTER**

**VOLUME II
PART B**

Prepared For:

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CHAPTER 30

HAZARDOUS WASTE BURNED IN BOILERS AND INDUSTRIAL FURNACES

This chapter does not apply to Exide in accordance with the Letter of Certification required of all of Exide suppliers of lead containing materials as provided in Appendix 4.



CHAPTER 31

INCINERATORS

Exide does not use incinerators to treat or store hazardous waste at the Baton Rouge smelter. This chapter is not applicable.



CHAPTER 32

MISCELLANEOUS UNITS

Exide acknowledges and understands the provisions and requirements of this chapter. Exide does not have any miscellaneous units; therefore this chapter does not apply.



CHAPTER 33

GROUND WATER PROTECTION

Title 33
ENVIRONMENTAL QUALITY
Part V. Hazardous Waste and Hazardous Materials
Chapter 33. Ground Water Protection

§3301. Applicability

- A. Except as provided in LAC 33:V.3301.C, the regulations in this Chapter apply to owners or operators of facilities that treat, store or dispose of hazardous waste. The owner or operator must satisfy the requirements identified in LAC 33:V.3301.B for all wastes (or constituents thereof) contained in solid waste management units at the facility, regardless of the time at which waste was placed in such units.

Response

Exide acknowledges the requirements of this citation. The regulations of this chapter apply to the Baton Rouge smelter as the facility treats and stores hazardous waste. The facility maintains two closed hazardous waste piles under the Post-Closure permit LAD 008 184 137 effective May 21, 2001. The piles were closed in-place in 1985 and 1986. A post-closure groundwater monitoring plan is in-place for these piles. The facility also has several regulated units including the Truck/Trailer storage area, the Whole Battery Storage Area, the K069/D008 storage area and the Containment Building. As these units are in operation and are not closure, groundwater monitoring is not conducted for these units.

- B. All solid waste management units must comply with the requirements in LAC 33:V.3322. A surface impoundment, waste pile, and land treatment unit or landfill that receives hazardous waste after July 26, 1982 (hereinafter referred to as a "regulated unit") must comply with the requirements of LAC 33:V.3303-LAC 33:V.3321 in lieu of LAC 33:V.3322 for purposes of detecting, characterizing and responding to releases to the uppermost aquifer. The financial responsibility requirements of LAC 33:V.3322 apply to regulated units.

Response

Exide acknowledges the requirements of this citation and will comply. Exide maintains one active and one closed solid waste landfill. The closed solid waste landfill is maintained under solid waste permit GD0332054P0326. The active solid waste landfill is maintained under solid waste permit GD0332054P0160.

- C. The owner or operator's regulated unit or units are not subject to regulation for releases into the uppermost aquifer under this Chapter if:**

- 1. The owner or operator is exempted under LAC 33:V.1501; or**

Response

Exide is not exempted under LAC 33:V.1501; therefore, this citation does not apply.

- 2. He operates a unit which the administrative authority finds:**

- a. is an engineered structure;**

Response

Exide's closed hazardous waste piles were closed in-place in 1985 and 1986 prior to promulgation of the environmental regulations. Clay with vegetative cover was selected as the cap system to minimize infiltration of precipitation.

- b. does not receive or contain liquid waste or waste containing free liquids;**

Response

The hazardous waste piles are closed and no longer receive waste. Only solid wastes (i.e., wastes not containing free liquids) were placed in the hazardous waste piles when filling occurred.

- c. is designed and operated to exclude liquid, precipitation, and other run-on and run-off;**

Response

The caps on the hazardous waste piles are clay with vegetative cover. The caps were designed and are operated to exclude liquid, precipitation and other run-on and run-off.

- d. has both inner and outer layers of containment enclosing the waste;

Response

As the waste piles were operated prior to promulgation of the environmental regulations, the closed waste piles do not have inner and outer layers of containment. The waste is enclosed by a clay liner and a clay cap.

- e. has a leak detection system built into each containment layer;

Response

As the waste piles were constructed and operated prior to promulgation of the environmental regulations, the piles do not have a leak detection system built into each containment layer. The waste piles are lined and capped with clay.

- f. the owner or operator will provide continuing operation and maintenance of these leak detection systems during the active life of the unit and the closure and post-closure care periods; and

Response

Exide acknowledges the requirements of this section. As the waste piles do not have leak detection systems, they cannot be operated or maintained. Exide does conduct scheduled inspections of the cap system and monitoring of groundwater in the detection monitoring program.

- g. to a reasonable degree of certainty, will not allow hazardous constituents to migrate beyond the outer containment layer prior to the end of the post-closure care period;

Response

The clay liner and cap, combined with the results of the detection monitoring program, provide a reasonable degree of certainty that hazardous constituents will not migrate beyond the outer containment layer prior to the end of the post-closure care period.

3. the administrative authority finds, pursuant to LAC 33:V.2719.D, that the treatment zone of a land treatment unit that qualifies as a regulated unit does not contain levels of hazardous constituents that are above background levels of those constituents by an amount that is statistically significant, and if an unsaturated zone monitoring program meeting the requirements of LAC 33:V.2711 has not shown a statistically significant increase in hazardous constituents below the treatment zone during the operating life of the unit. An exemption under LAC 33:V.3301.C can only relieve an owner or operator of responsibility to meet the requirements of this Chapter during the post-closure care period; or

Response

Exide does not operate land treatment units; therefore this citation does not apply.

4. the administrative authority finds that there is no potential for migration of liquid from a regulated unit to the uppermost aquifer during the active life of the regulated unit (including the closure period) and the post-closure care period specified under LAC 33:V.3521. This demonstration must be certified by a qualified geologist or geotechnical engineer. In order to provide an adequate margin of safety in the prediction of potential migration of liquid, the owner or operator must base any predictions made under LAC 33:V.3301.C on assumptions that maximize the rate of liquid migration;

Response

Exide does not request this exemption.

5. he designs and operates a pile in compliance with LAC 33:V.2301.C.

Response

Exide operates the closed hazardous waste piles in accordance with the Closure/Post-Closure permit for those piles. Exide does not operate active hazardous waste piles.

- D. The regulations under this Chapter apply during the active life of the regulated unit (including the closure period). After closure of the regulated unit, the regulations in this Subpart:**

- 1. do not apply if all waste, waste residues, contaminated containment system components, and contaminated subsoils are removed or decontaminated at closure;**

Response

The two closed hazardous waste piles were closed in-place and were not removed or decontaminated at closure; therefore this citation does not apply.

For the regulated units at the facility, including the Truck/Trailer Storage Area, the K069/D008 storage area, the Whole Battery storage area, Slag Stabilization Unit and the Containment Building, closure will be conducted by removing waste, waste residue, contaminated system components, and contaminated subsoils. If all waste, waste residues, contaminated system components and contaminated subsoils cannot be removed, the Containment Building will be closed in accordance with the requirements for a landfill as indicated in LAC 33:V.Chapter 18.

- 2. apply during the post-closure care period under LAC 33:V.Chapter 35, Subchapter B post-closure requirements if the owner or operator is conducting a detection monitoring program under LAC 33:V.3317;**

Response

Exide acknowledges the requirements of this citation and will comply. Facility-wide groundwater monitoring is not required for facility operations in accordance with the RCRA Part B Hazardous Waste Permit.

The closed hazardous waste piles are maintained in accordance with the Hazardous Waste Permit and the Closure/Post-Closure

Permit for the waste piles. The facility's detection monitoring program includes semi-annual monitoring for one upgradient (MW-1R) and six downgradient monitoring wells (MW-4R, MW-12R, MW-16, MW-13R, MW-17, MW-18). Each well is screened in the first permeable zone, ranging from 38 to 45 feet below ground surface. The wells are monitored for pH, specific conductivity, dissolved lead, dissolved cadmium, iron, manganese, sodium, chloride and sulfate. The vertical limit of compliance is the shallow zone intercepted by the six downgradient wells. The horizontal limit of compliance for Waste Pile #1 is a line connecting wells MW-12R, MW-4R and MW-16. The horizontal limit of compliance for Waste Pile #2 is a line connecting wells MW-13R, MW-17 and MW-18. The Groundwater Sampling and Analysis Plan is provided in Appendix 7. The Plan includes a description of the monitoring well network, groundwater sampling procedures, documentation, decontamination and cross-contamination control, analytical procedures, field and laboratory quality assurance/quality control, monitoring well maintenance and reporting.

Monitoring is also conducted semi-annually at six monitoring wells located at the solid waste landfills in accordance with the Solid Waste Permits. However, this monitoring program is not addressed in this Hazardous Waste Permit Renewal.

3. **apply during the compliance period under LAC 33:V.3313 if the owner or operator is conducting a compliance monitoring program under LAC 33:V.3319 or a corrective action program under LAC 33:V.3321.**

Response

Exide conducts a detection monitoring program for the two closed hazardous waste piles in accordance with LAC 33:V.3317; therefore this citation does not apply. Exide will comply with the requirements of this section if a compliance monitoring program or corrective action program are required.

- E. **Regulations in this Chapter may apply to miscellaneous units when necessary to comply with LAC 33:V.3203-3207.**

Response

Exide acknowledges the requirements of this citation; however this it does not apply as Exide does not have miscellaneous units.

- F. The regulations of this Chapter apply to all owners and operators subject to the requirements of LAC 33:V.305.H when the department issues either a post-closure permit or an enforceable document (as defined in LAC 33:V.305.H) at the facility. When the department issues an enforceable document, references in this Chapter to "in the permit" mean "in the enforceable document."

Response

Exide acknowledges the requirements of this citation and will comply.

- G. The administrative authority may replace all or part of the requirements of this Chapter applying to a regulated unit with alternative requirements for groundwater monitoring and corrective action for releases to groundwater set out in the permit (or in an enforceable document as defined in LAC 33:V.305.H) where the administrative authority determines that:

1. the regulated unit is situated among solid waste management units (or areas of concern), a release has occurred, and both the regulated unit and one or more solid waste management unit(s) (or areas of concern) are likely to have contributed to the release; and
2. it is not necessary to apply the groundwater monitoring and corrective action requirements of this Chapter because alternative requirements will protect human health and the environment.

Response

Exide acknowledges that the Department may replace all or part of the requirements of this Chapter with alternative requirements for groundwater monitoring. Exide will comply with the requirements established by the Department.

§3303. Required Programs

A. Owners and operators subject to this Chapter must conduct a monitoring and response program as follows.

- 1. Whenever hazardous constituents under LAC 33:V.3307 from a regulated unit are detected at the compliance point under LAC 33:V.3311, the owner or operator must institute a compliance monitoring program under LAC 33:V.3319. "Detected" is defined as statistically significant evidence of contamination as described in LAC 33:V.3317.F.**

Response

Exide acknowledges the requirements of this citation. To date, hazardous constituents under LAC 33:V.3307 have not been detected at the compliance points for the closed hazardous waste piles. If hazardous constituents are detected in the future, Exide will implement a compliance monitoring program.

- 2. Whenever the ground water protection standard under LAC 33:V.3305 is exceeded, the owner or operator must institute a corrective action program under LAC 33:V.3321. "Exceeded" is defined as statistically significant evidence of increased contamination as described in LAC 33:V.3319.D.**

Response

Exide acknowledges the requirements of this citation and will comply. To date, groundwater protection standards under LAC 33:V.3305 at the closed hazardous waste piles have not been exceeded. If groundwater protection standards are exceeded in the future, Exide will implement a corrective action program.

- 3. Whenever hazardous constituents under LAC 33:V.3307 from a regulated unit exceed concentration limits under LAC 33:V.3309 in ground water between the compliance point under LAC 33:V.3311 and the downgradient facility property boundary, the owner or operator must institute a corrective action program under LAC 33:V.3321.**

Response

Exide acknowledges the requirements of this citation and will comply. To date, hazardous constituents under LAC 33:V.3307 have not exceeded concentration limits under LAC 33:V.3309 between the compliance point and the downgradient facility property boundary. If concentration limits are exceeded in the future, Exide will implement a corrective action program.

4. **In all other cases, the owner or operator must institute a detection monitoring program under LAC 33:V.3317.**

Response

Exide acknowledges this requirement and will comply. Exide currently conducts semi-annual groundwater monitoring at one upgradient and six downgradient monitoring wells as part of its detection monitoring program for the two closed hazardous waste piles. The Groundwater Sampling and Analysis Plan is included in Appendix 7. The Plan includes a description of the monitoring well network, groundwater sampling procedures, documentation, decontamination and cross-contamination control, analytical procedures, field and laboratory quality assurance/quality control, monitoring well maintenance and reporting.

- B. **The administrative authority will specify in the facility permit the specific elements of the monitoring and response program. The administrative authority may include one or more of the programs identified in LAC 33:V.3303.A in the facility permit as may be necessary to protect human health and the environment. The administrative authority will specify the circumstances under which each of the programs will be required. In deciding whether to require the owner or operator to be prepared to institute a particular program, the administrative authority will consider the potential adverse effects on human health and the environment that might occur before final administrative action on a permit modification application to incorporate such a program could be taken.**

Response

Exide currently conducts a detection monitoring program in accordance with the Post-Closure Permit for the closed hazardous waste piles. If it is determined that the detection monitoring program no longer satisfies the requirements of the Post-Closure Program, Exide will submit an

application for a permit modification to make the appropriate changes to the program.

- C. In addition, all permitted facilities where pre-existing ground water contamination continues to be present shall be required to institute compliance monitoring as required in LAC 33:V.3319 of this Chapter and corrective action programs as required in LAC 33:V.3321 of this Chapter. In no case shall free phase or mobile hazardous constituents be unmitigated. Hazardous constituents shall be isolated, reduced or stabilized consistent with the application of good engineering practices and best practical technology:**

Response

Pre-existing groundwater contamination is not known to exist at the Exide facility; therefore, this section does not apply.

- D. All permits for facilities with pre-existing ground water contamination shall contain a permit condition containing the concentration limits of hazardous constituents established consistent with LAC 33:V.3305, 3307, and 3309. In no case shall other than background concentration limits be listed in the initial permit. Compliance with corrective action programs required in LAC 33:V.3303, 3319, and 3321 will constitute a permitted variance. Corrective action programs shall be reviewed annually and may be based on predictive computer modeling. Alternate concentrations provided in LAC 33:V.3309.A or B may be set by permit amendment should the original concentration limits be unattainable within 36 months.**

Response

Pre-existing groundwater contamination is not known to exist at the Exide facility; therefore, this section does not apply.

§3305. Ground Water Protection Standard

- A. The owner or operator must comply with conditions specified in the facility permit that are designed to ensure that hazardous constituents under LAC 33:V.3307 detected (as defined in LAC 33:V.3303.A.1) in the ground water from a regulated unit do not exceed the concentration limits under LAC 33:V.3309 in the uppermost aquifer underlying the waste management area beyond the point of compliance under LAC 33:V.3311 during the compliance**

period under LAC 33:V.3313. The administrative authority will establish this ground water protection standard in the facility permit when hazardous constituents have been detected (as defined in LAC 33:V.3303.A.1) in the ground water.

Response

As hazardous constituents have not been detected in the groundwater above historic levels or regulatory thresholds, Exide will continue its detection monitoring program. If it is determined that the detection monitoring program no longer satisfies the requirements of the Post-Closure Program, Exide will submit an application for a permit modification to make the appropriate changes to the program. Exide acknowledges that the Department will establish groundwater protection standards in the facility permit when hazardous constituents have been detected above historic levels or regulatory thresholds. If a compliance monitoring program is implemented, the downgradient wells will be monitored for constituents listed in LAC 33:V.3325.Table 4 in addition to pH, specific conductivity, chloride, sulfates, dissolved lead, dissolved cadmium, iron, manganese and sodium at a frequency required under the established program.

- B. The ground water monitoring system shall consist of necessary wells, at least one hydraulically upgradient, to monitor ground water moving toward the facility, and all the necessary number of wells downgradient to monitor ground water leaving the facility. The wells shall be located to intercept contamination at the earliest possible occurrence. Well locations and completion depths must be selected to assure that all probable contaminant flow-paths are monitored. The wells shall be cased, and the casings shall be adequately sealed so that contaminants cannot be introduced from the surface or from one aquifer to another within the well bore, and so that only one water bearing sand is sampled per well. The entire ground water monitoring system must be approved by the administrative authority.**

Response

The facility's detection monitoring program includes semi-annual monitoring for one upgradient (MW-1R) and six downgradient monitoring wells (MW-4R, MW-12R, MW-16, MW-13R, MW-17, MW-18). Well locations are provided on Figure 5. The vertical limit of compliance is the shallow zone intercepted by the six downgradient wells. The horizontal limit of compliance for Waste Pile #1 is a line connecting wells MW-12R, MW-4R and MW-16. The horizontal limit of compliance for Waste Pile #2 is a line connecting wells MW-13R, MW-17 and MW-18. The wells were

installed from December 1994 through February 1995. Each well is cased with screens in the first permeable zone at depths ranging from 28 to 45 feet below ground surface. The LDEQ-approved Groundwater Sampling and Analysis Plan is provided in Appendix 7. The Plan includes a description of the monitoring well network, groundwater sampling procedures, documentation, decontamination and cross-contamination control, analytical procedures, field and laboratory quality assurance/quality control, monitoring well maintenance and reporting.

- C. The owner or operator of the facility shall develop and adhere to a ground water sampling and analysis plan, and shall immediately advise the department when significant changes in ground water quality are determined and verified.**

Response

The LDEQ-approved Groundwater Sampling and Analysis Plan for the closed waste piles is provided in Appendix 7. The Plan includes a description of the monitoring well network, groundwater sampling procedures, documentation, decontamination and cross-contamination control, analytical procedures, field and laboratory quality assurance/quality control, monitoring well maintenance and reporting. Exide submits a semi-annual and an annual monitoring report to LDEQ. If it is determined that the detection monitoring program no longer satisfies the requirements of the Post-Closure Permit, Exide will submit an application for a permit modification to make appropriate changes to the program.

D. Leachate

- 1. The leachate monitoring system shall contain a method and device to secure samples, and determine leakage at two locations in each unit where the system is required as follows:**

Response

Exide does not monitor leachate from the closed hazardous waste piles; therefore this section does not apply.

- a. at the low point inside the barrier (liner) encased in sand, or other porous material, ensuring that leachate from all contents will percolate to the low point.**

Provision for pumping out all leachate which gathers inside this barrier shall be made; and

- b. at a low point under the barrier (liner) and encased in a porous layer over a dense (at least three feet of clay at 1×10^{-7} cm/sec) underlayment, or natural soil, to verify the integrity of the liner.**
 - 2. The system shall permit sampling from an accessible surface location.**
 - 3. An equivalent system acceptable to the administrative authority may be installed in existing facilities.**
- E. Air. Installed or available portable air monitoring devices shall be located at all sites involving: incineration, landfill, or treatment facilities. An installed air monitoring system (triangular grid) with continuous recording shall be installed at all commercial sites.**

Response

The hazardous waste piles are closed; therefore, air monitoring is not required.

Hazardous waste treatment is conducted at the Slag Stabilization Unit at the Containment Building. Air from the unit is handled by the Air Handling System discussed in Chapters 15 and 17. Exide has measures in place to control fugitive dust emissions such that any openings (doors, windows, vents, cracks, etc.) exhibit no visible emissions. In addition, all associated particulate collection devices (e.g., fabric filter, electrostatic precipitator) will be operated and maintained with sound air pollution control practices. Exide maintains a state of no visible emissions at all times during normal operating and maintenance conditions, including when vehicles and personnel are entering and exiting the containment building. Exide's containment building is operated with a ventilation system to permitted point sources as shown on Figure 10. This ventilation system provides inward air flow (negative pressure) on the building. In addition, liquids are occasionally used on the lead bearing materials within the building for dust suppression purposes. These controls are used to ensure that no visible emissions are emitted from the containment building.

- F. Sampling.** Samples shall be taken from all required monitoring systems before waste is introduced (for new sites) to provide adequate base-line data. Sampling shall be done quarterly, and complete records shall be maintained at the site for examination by the administrative authority.

Response

The Exide facility is not a new site; therefore quarterly sampling for determination of base-line is not applicable. In accordance with the Post-Closure Permit and Groundwater Sampling and Analysis Plan (Appendix 7), semi-annual sampling is currently being conducted to determine background levels.

§3307. Hazardous Constituents

- A.** The administrative authority will specify in the facility permit the hazardous constituents to which the ground water protection standard of LAC 33:V.3305 applies. Hazardous constituents are constituents identified in Table 1 of LAC 33:V.Chapter 31 that have been detected in ground water in the uppermost aquifer underlying a regulated unit, and that are reasonably expected to be in or derived from waste contained in a regulated unit, unless the administrative authority has excluded them under LAC 33:V.3307.B.

Response

In accordance with the Post-Closure Permit and Groundwater Sampling and Analysis Plan (Appendix 7), semi-annual groundwater samples for the detection monitoring program are analyzed for pH, specific conductivity, chloride, sulfates, dissolved lead, dissolved cadmium, iron, manganese, and sodium. If a compliance monitoring program is established, the six downgradient wells will also be analyzed for constituents listed in LAC 33:V.3325.Table 4.

- B.** The administrative authority upon sufficient demonstration by the permittee may exclude any Table 1, LAC 33:V.Chapter 31 constituents from the list of hazardous constituents specified in the facility permit if he finds that these constituents are not capable of posing a substantial present or potential hazard to human health or the environment. In deciding whether to grant an exemption, the administrative authority will consider the following:

Response

In the Post-Closure permit for the hazardous waste piles, the Department determined that semi-annual groundwater samples for the detection monitoring program should be analyzed for pH, specific conductivity, chloride, sulfates, dissolved lead, dissolved cadmium, iron, manganese, and sodium. Exide is not proposing to modify the monitoring requirements of the detection monitoring program; therefore the requirements of this citation do not apply.

1. **potential adverse effects on ground water quality, considering:**
 - a. **the physical and chemical characteristics of the waste in the regulated unit, including its potential for migration;**
 - b. **the hydrogeological characteristics of the facility and surrounding land;**
 - c. **the quantity of ground water and the direction of ground water flow;**
 - d. **the proximity and withdrawal rates of ground water users;**
 - e. **the current and future uses of ground water in the area;**
 - f. **the existing quality of ground water including other sources of contamination, and their cumulative impact on the ground water quality;**
 - g. **the potential for health risks caused by human exposure to waste constituents;**
 - h. **the potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents; and**

- i. the persistence and permanence of the potential adverse effects; and**
- 2. potential adverse effects on hydraulically-connected surface water quality, considering:**
 - a. the volume and physical and chemical characteristics of the waste in the regulated unit;**
 - b. the hydrogeological characteristics of the facility and surrounding land;**
 - c. the quantity and quality of ground water, and the direction of ground water flow;**
 - d. the patterns of rainfall in the region;**
 - e. the proximity of the regulated unit to surface waters;**
 - f. the current and future uses of surface waters and any waters in the area, and any water quality standards established for those surface waters;**
 - g. the existing quality of surface water, including other sources of contamination, and the cumulative impact on surface water quality;**
 - h. the potential for health risks caused by human exposure to waste constituents;**
 - i. the potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents; and**
 - j. the persistence and permanence of the potential adverse effects.**

- C. In making any determination under LAC 33:V.3307.B of this Section about the use of ground water in the area around the facility, the administrative authority will consider any identification of underground sources of drinking water and exempted aquifers.**

Response

Several deep aquifers have been identified at the Baton Rouge Smelter. The aquifers are located in the '400-foot', '600-foot', '1,200-foot', '1,500-foot', '2,000-foot', and '2,400-foot' sands. The numbers in quotations identify different sand units and are not true depths of the aquifers. The depth of ground water in the aquifers are as follows: '400-foot' and '600-foot', 60 feet bgs; '1,200-foot' and '1,500-foot', 95 feet bgs; and '2,000-foot', 275 feet bgs.

14 water supply wells are located within 2 miles of the facility, including Alsen Water Works and the Capital Water Company. 12 industrial supply wells are also located within 2 miles of the facility. The Baton Rouge Smelter has 2 wells on-site for process and drinking water supplies.

§3309. Concentration Limits

- A. The administrative authority will specify in the facility permit concentration limits in the groundwater for hazardous constituents established under LAC 33:V.3307. The concentration of a hazardous constituent:**

- 1. must not exceed the background level of that constituent in the groundwater at the time that limit is specified in the permit;
or**

Response

Exide acknowledges this requirement and will comply.

- 2. for any of the constituents listed in Table 1 of this Section, must not exceed the respective value given in that table if the background level of the constituent is below the value given;
or**

Response

Exide acknowledges this requirement and will comply.

3. must not exceed an alternative limit established by the administrative authority under Subsection B of this Section.

Response

Exide acknowledges this requirement and will comply.

Table 1. Maximum Concentration of Constituents for Ground Water Protection

Constituent	Maximum Concentration ¹
Arsenic	0.05
Barium	1.0
Cadmium	0.01
Chromium	0.05
Lead	0.05
Mercury	0.002
Selenium	0.01
Silver	0.05
Endrin (1,2,3,4,10,10-hexachloro-1,7-epoxy-1,4,4a,5,6,7,8,9a-octahydro-1, 4-endo-5, 8-demethano naphthalene)	0.0002
Lindane (1,2,3,4,5,6-hexachlorocyclohexane, gamma isomer)	0.004
Methoxychlor (1,1,1-Trichloro-2, 2-bis (p-methoxyphenylethane)	0.01
Toxaphene (C ₁₀ H ₁₀ Cl ₆ , Technical chlorinated camphene, 67-69 percent chlorine)	0.005
2,4-D (2,4-Dichlorophenoxyacetic acid)	0.1
2,4,5-TP Silvex (2,4,5-Trichlorophenoxypropionic acid)	0.01
¹ Milligrams per liter	

- C. The administrative authority may establish an alternate concentration limit for a hazardous constituent if he finds that the

constituent will not pose a substantial present or potential hazard to human health or the environment as long as the alternate concentration limit is not exceeded. The establishment of such alternative concentration limits shall be in accordance with LAC 33:1. Chapter 13. In establishing alternate concentration limits, the administrative authority will consider the following factors:

Response

Exide acknowledges this citation and will comply with alternate concentration limits if established by the Department.

1. **potential adverse effects on groundwater quality, considering:**
 - a. **the physical and chemical characteristics of the waste in the regulated unit, including its potential for migration;**
 - b. **the hydrogeological characteristics of the facility and surrounding land;**
 - c. **the quantity of groundwater and the direction of groundwater flow;**
 - d. **the proximity and withdrawal rates of groundwater users;**
 - e. **the current and future uses of groundwater in the area;**
 - f. **the existing quality of groundwater, including other sources of contamination and their cumulative impact on the groundwater quality;**
 - g. **the potential for health risks caused by human exposure to waste constituents;**
 - h. **the potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents;**

- i. the persistence and permanence of the potential adverse effects; and
2. potential adverse effects on hydraulically-connected surface water quality, considering:
 - a. the volume and physical and chemical characteristics of the waste in the regulated unit;
 - b. the hydrogeological characteristics of the facility and surrounding land;
 - c. the quantity and quality of groundwater and the direction of groundwater flow;
 - d. the patterns of rainfall in the region;
 - e. the proximity of the regulated unit to surface waters;
 - f. the current and future uses of surface waters in the area and any water quality standards established for those surface waters;
 - g. the existing quality of surface water, including other sources of contamination and the cumulative impact on surface water quality;
 - h. the potential for health risks caused by human exposure to waste constituents;
 - i. the potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents; and
 - j. the persistence and permanence of the potential adverse effects.

- D. In making any determination under Subsection B of this Section about the use of groundwater in the area around the facility, the administrative authority will consider any identification of underground sources of drinking water and exempted aquifers identified in the permit application under LAC 33:V.Chapter 3. Any identification of underground sources of drinking water shall be in accordance with LAC 33:I.Chapter 13.**

Response

Exide acknowledges this citation and will comply.

§3311. Point of Compliance

- A. The administrative authority will specify in the facility permit the point of compliance at which the ground water protection standard of LAC 33:V.3305.A applies and at which monitoring must be conducted. The point of compliance is a vertical surface located at the hydraulically downgradient limit of the waste management area or the delineated zone of contamination that extends down into the uppermost aquifer underlying the regulated units or the delineated zone of contamination.**

Response

As indicated in the Post-Closure Permit and the Groundwater Sampling and Analysis Plan, the vertical limit of compliance is the shallow zone intercepted by the six downgradient wells (MW-4R, MW-12R, MW-16, MW-13R, MW-17, MW-18). The horizontal limit of compliance for Waste Pile #1 is a line connecting wells MW-12R, MW-4R and MW-16. The horizontal limit of compliance for Waste Pile #2 is a line connecting wells MW-13R, MW-17 and MW-18.

- B. The waste management area is the limit projected in the horizontal plane of the area on which waste will be placed during the active life of a regulated unit.**
- 1. The waste management area includes horizontal space taken up by any liner, dike, or other barrier designed to contain waste in a regulated unit.**

2. **If the facility contains more than one regulated unit, the waste management area is described by an imaginary line circumscribing the several regulated units.**

Response

Exide acknowledges this citation and will comply. The hazardous waste piles are closed.

§3313. Compliance Period

- A. **The administrative authority will specify in the facility permit the compliance period during which the ground water protection standard of LAC 33:V.3305 applies. The compliance period is the number of years equal to the active life of the waste management area (including any waste management activity prior to permitting, and the closure period.)**

Response

Exide implements a detection monitoring program with a post-closure period of 30 years. The post-closure period began at the effective date of the Post-Closure Permit, or May 2001. Two years of the post-closure period have been completed. Twenty-eight years of the post-closure period remain.

- B. **The compliance period begins when the owner or operator initiates a compliance monitoring program meeting the requirements of LAC 33:V.3319.**

Response

Exide acknowledges this citation and will comply; however Exide implements a detection monitoring program and a compliance monitoring program has not been implemented at the facility.

- C. **If the owner or operator is engaged in a corrective action program at the end of the compliance period specified in Subsection A of this Section, the compliance period is extended until the owner or operator can demonstrate that the ground water protection standard of LAC 33:V.3305 has not been exceeded for a period of three consecutive years.**

Response

Exide acknowledges this citation and will comply.

§3315. General Ground Water Monitoring Requirements

[NOTE: The owner or operator must comply with the following requirements for any ground water monitoring program developed to satisfy LAC 33:V.3317, 3319, or 3321.]

- A. The ground water monitoring system must consist of a sufficient number of wells, installed at appropriate locations and depths, to yield ground water samples from the uppermost aquifer that fulfill the following requirements.**
 - 1. The samples must represent the quality of ground water that has not been affected by leakage from a regulated unit. A determination of background quality may include sampling of wells that are not hydraulically upgradient of the waste management area where:**
 - a. hydrogeologic conditions do not allow the owner or operator to determine which wells are hydraulically upgradient; and**
 - b. sampling at other wells will provide an indication of background ground water quality that is representative or more representative than that provided by the upgradient wells.**
 - 2. The samples must represent the quality of water passing the point of compliance.**
 - 3. The samples must allow for the detection (as defined in LAC 33:V.3303.A.1) of contamination when hazardous waste or hazardous constituents have migrated from the waste management area to the uppermost aquifer.**

Response

The groundwater monitoring system was determined in the Post-Closure Permit for the hazardous waste piles. The groundwater monitoring system includes one upgradient (MW-1R) and six downgradient wells (MW-4R, MW-12R, MW-16, MW-13R, MW-17, MW-18). Well locations are provided in the Groundwater Sampling and Analysis Plan (Appendix 7). The wells are screened in the first permeable zone, ranging from 38 to 45 feet below ground surface.

- B. If a facility contains more than one regulated unit, separate ground water monitoring systems are not required for each regulated unit, if provisions for sampling the ground water in the uppermost aquifer will enable detection and measurement at the compliance point for hazardous constituents for the regulated units.**

Response

The hazardous waste piles both utilize MW-1R as the upgradient monitoring well. As the waste piles are located at different locations at the facility, each has a unique set of downgradient wells. The horizontal limit of compliance for Waste Pile #1 is a line connecting wells MW-12R, MW-4R and MW-16. The horizontal limit of compliance for Waste Pile #2 is a line connecting wells MW-13R, MW-17 and MW-18.

- C. All monitoring wells must be cased in a manner that maintains the integrity of the monitoring-well bore hole. This casing must be screened or perforated, and packed with gravel or sand, where necessary, to enable collection of ground water samples. The annular space (i.e., the space between the bore hole and well casing) above the sampling depth must be sealed to prevent contamination of samples and the ground water.**

Response

Monitoring wells MW-1R, MW-4R, MW-12R, MW-13R, MW-16, MW-17, and MW-18 are 2 inch diameter PVC with screens in the first permeable zone. The screens are packed in sand. The annular space above the sampling depth is sealed with bentonite-cement grout to prevent contamination of samples and the groundwater.

- D. The ground water monitoring program must include consistent sampling and analysis procedures that are designed to ensure monitoring results that provide a reliable indication of ground water**

quality below the waste management area. At a minimum, the program must include procedures and techniques for:

1. sample collection;

Response

Exide's Groundwater Sampling and Analysis Plan is provided in Appendix 7. Sample collection procedures include water level measurement immediately prior to purging, calculation of the volume of water to be purged from the well prior to sampling, purging with dedicated PVC bailers at a rate typically less than 5 gpm, field measurements for pH, temperature and conductivity, collection of samples with dedicated bailers and field documentation. The well is considered adequately purged when subsequent samples are observed to have less than +/- 10% variation in at least two of the field parameters.

2. sample preservation and shipment;

Response

Exide's Groundwater Sampling and Analysis Plan is provided in Appendix 7. Sample preservation, handling and analysis is conducted in accordance with Test Methods for Evaluating Solid Waste Physical/Chemical Methods Third Edition (EPA Publication Solid Waste Physical/Chemical Methods Third Edition, EPA Publication Number SW-846, 1986, as revised December 1987) or an LDEQ-approved equivalent. Sample containers are received from the laboratory with appropriate preservatives. Samples for dissolved metals are collected in sample containers without preservation. Samples are sent to the laboratory for filtration prior to analysis. All samples are placed on ice immediately after collection.

3. analytical procedures; and

Response

Exide's Groundwater Sampling and Analysis Plan is provided in Appendix 7. Analysis of groundwater samples is performed in accordance with SW-846 test methods or an LDEQ-approved equivalent. Samples are analyzed for pH, specific conductance,

chloride, sulfate, dissolved lead, dissolved cadmium, total iron, total manganese and total sodium.

4. chain of custody control.

Response

Exide's Groundwater Sampling and Analysis Plan is provided in Appendix 7. Each sample is recorded on a chain of custody form which includes sample identification number, date and time of sample collection, date sample was submitted to the laboratory, sample collector's name, number and type of containers, parameters to be analyzed, signature of persons relinquishing and obtaining custody of samples, and date and time of custody transfer. With each transfer of sample custody, the persons involved with verify sample numbers and conditions. When custody is transferred, both the person relinquishing and receiving custody must sign in the proper place. The transferor will keep a copy of the signed chain-of-custody and the original chain-of-custody will remain with the samples.

- E. The ground water monitoring program must include sampling and analytical methods that are appropriate for ground water sampling, and that accurately measure hazardous constituents in ground water samples.**

Response

Exide acknowledges this citation and will comply. The sampling and analytical methods used for the detection monitoring program and appropriate for groundwater sampling and accurately measure hazardous constituents in groundwater samples.

- F. The ground water monitoring program must include a determination of the ground water surface elevation each time ground water is sampled.**

Response

The groundwater surface elevation is measured each time the groundwater is sampled.

G. In detection monitoring or where appropriate in compliance monitoring, data on each indicator parameter and on each hazardous constituent specified in the permit will be collected from background wells and wells at the compliance point(s). The number and kinds of samples collected to establish background shall be appropriate for the form of statistical test employed, following generally accepted statistical principles. The sample size shall be as large as necessary to ensure with reasonable confidence that a contaminant release to ground water from a facility will be detected. The owner or operator will determine an appropriate sampling procedure and interval for each hazardous constituent listed in the facility permit which shall be specified in the unit permit upon approval by the administrative authority. This sampling procedure shall be:

- 1. a sequence of at least four samples, taken at an interval that assures, to the greatest extent technically feasible, that an independent sample is obtained, by reference to the uppermost aquifer's effective porosity, hydraulic conductivity, and hydraulic gradient, and the fate and transport characteristics of the potential contaminants; or**

Response

As indicated in the Groundwater Sampling and Analysis Plan (Appendix 7), a minimum of four sampling events will be used to establish background levels for the monitoring parameters. Sampling events are conducted semi-annually. This interval assures that independent samples are collected. A statistical procedure for the evaluation of groundwater monitoring data will be selected after sufficient background monitoring data has been collected.

- 2. an alternate sampling procedure proposed by the owner or operator and approved by the administrative authority.**

Response

Exide is not proposing an alternate sampling procedure; therefore this citation does not apply.

H. The owner or operator will specify one of the following statistical methods to be used in evaluating ground water monitoring data for each indicator parameter and hazardous constituent that, upon

approval by the administrative authority, will be specified in the unit permit. The statistical test chosen shall be conducted separately for each indicator parameter and hazardous constituent in each well. Where practical quantification limits (PQLs) are used in any of the following statistical procedures to comply with LAC 33:V.3315.1.5, the PQL must be proposed by the owner or operator and approved by the administrative authority. Use of any of the following statistical methods must be protective of human health and the environment and must comply with the performance standards outlined in LAC 33:V.3315.1.

Response

Exide acknowledges these requirements and will comply. Exide will select a statistical procedure for the evaluation of groundwater monitoring data after sufficient background monitoring data has been collected. When the most appropriate statistical method has been determined and adequate sampling data collected, Exide will submit its recommendations to the LDEQ for approval. Statistical evaluation of the groundwater data will not begin until the statistical procedure has been approved by the LDEQ.

1. A parametric analysis of variance (ANOVA) followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance well's mean and the background mean levels for each constituent.
2. An analysis of variance (ANOVA) based on ranks followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance well's median and the background median levels for each constituent.
3. A tolerance or prediction interval procedure in which an interval for each constituent is established from the distribution of the background data, and the level of each constituent in each compliance well is compared to the upper tolerance or prediction limit.
4. A control chart approach that gives control limits for each constituent.

5. Another statistical test method submitted by the owner or operator and approved by the administrative authority.
1. Any statistical method chosen under LAC 33:V.3315.H for specification in the unit permit shall comply with the following performance standards, as appropriate.

Response

Exide acknowledges the requirements of this section and will comply when selecting a statistical method.

1. The statistical method used to evaluate ground water monitoring data shall be appropriate for the distribution of chemical parameters or hazardous constituents. If the distribution of the chemical parameters or hazardous constituents is shown by the owner or operator to be inappropriate for a normal theory test, then the data should be transformed or a distribution-free theory test should be used. If the distributions for the constituents differ, more than one statistical method may be needed.
2. If an individual well comparison procedure is used to compare an individual compliance well constituent concentration with background constituent concentrations or a ground water protection standard, the test shall be done at a Type I error level no less than 0.01 for each testing period. If a multiple comparisons procedure is used, the Type I experimentwise error rate for each testing period shall be no less than 0.05; however, the Type I error of no less than 0.01 for individual well comparisons must be maintained. This performance standard does not apply to tolerance intervals, prediction intervals, or control charts.
3. If a control chart approach is used to evaluate ground water monitoring data, the specific type of control chart and its associated parameter values shall be proposed by the owner or operator and approved by the administrative authority if he or she finds it to be protective of human health and the environment.

4. If a tolerance interval or a prediction interval is used to evaluate ground water monitoring data, the levels of confidence and, for tolerance intervals, the percentage of the population that the interval must contain, shall be proposed by the owner or operator and approved by the administrative authority if he or she finds these parameters to be protective of human health and the environment. These parameters will be determined after considering the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern.
 5. The statistical method shall account for data below the limit of detection with one or more statistical procedures that are protective of human health and the environment. Any practical quantification limit (PQL) approved by the administrative authority under LAC 33:V.3315.H that is used in the statistical method shall be the lowest concentration level that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operating conditions that are available to the facility.
 6. If necessary, the statistical method shall include procedures to control or correct for seasonal and spatial variability as well as temporal correlation in the data.
- J. Ground water monitoring data collected in accordance with LAC 33:V.3315.G including actual levels of constituents must be maintained in the facility operating record. The administrative authority will specify in the permit when the data must be submitted for review.

Response

As required by the Post-Closure Permit and as indicated in the Groundwater Sampling and Analysis Plan (Appendix 7), Exide will prepare a semiannual groundwater report within 15 days after completing the analytical work and review of analyses and computations. The second semi-annual report will be submitted by March 1 as the annual report required by the Post-Closure Permit. Semi-annual and annual reports will be maintained in the facility operating record and submitted to LDEQ.

- K. The ground water monitoring program must ensure that the permittee maintains records from all required ground water monitoring wells and associated ground water surface elevations for the active life of the facility, including the operating, closure, and post-closure care periods.**

Response

The semi-annual and annual groundwater reports will include information regarding all required groundwater monitoring wells and associated groundwater surface elevations. Reports will be maintained at the facility for operating, closure and post-closure care periods.

§3317. Detection Monitoring Program

[NOTE: An owner or operator required to establish a detection monitoring program under this Subpart must, at a minimum, discharge the following responsibilities.]

- A. The owner or operator must monitor for indicator parameters (e.g., specific conductance, total organic carbon, or total organic halogen), waste constituents, or reaction products that provide a reliable indication of the presence of hazardous constituents in ground water. The authority will specify the parameters or constituents to be monitored in the facility permit, after considering the following factors:**
- 1. the types, quantities, and concentrations of constituents in wastes managed at the regulated unit;**
 - 2. the mobility, stability, and persistence of waste constituents or their reaction products in the unsaturated zone beneath the waste management area;**
 - 3. the detectability of indicator parameters, waste constituents, and reaction products in ground water; and**
 - 4. the concentrations or values, and coefficients of variation of proposed monitoring parameters or constituents in the ground water background.**

Response

In accordance with the Post-Closure Permit, Exide monitors wells MW-1R, MW-4R, MW-12R, MW-13R, MW-16, MW-17 and MW-18 for pH, specific conductance, chloride, sulfate, dissolved lead, dissolved cadmium, total iron, total manganese, and total sodium. These parameters were specified by LDEQ in the Post-Closure Permit.

- B. The owner or operator must install a ground water monitoring system at the compliance point as specified under LAC 33:V.3311. The ground water monitoring system must comply with LAC 33:V.3315.A.2, B, and C.**

Response

Exide acknowledges this requirement and will comply. Exide has implemented a detection monitoring system at the compliance points for Hazardous Waste Piles #1 and #2. The horizontal limit of compliance for Waste Pile #1 is a line connecting wells MW-12R, MW-4R and MW-16. The horizontal limit of compliance for Waste Pile #2 is a line connecting wells MW-13R, MW-17 and MW-18.

- C. The owner or operator must conduct a ground water monitoring program for each chemical parameter and hazardous constituent specified in the permit pursuant to LAC 33:V.3317.A in accordance with LAC 33:V.3315.G. The owner or operator must maintain a record of ground water analytical data as measured and in a form necessary for the determination of statistical significance under LAC 33:V.3315.H.**

Response

Exide acknowledges this requirement and will comply. Exide conducts a detection monitoring program for each chemical parameter and hazardous constituent specified in the Post-Closure Permit. As indicated in the Groundwater Sampling and Analysis Plan (Appendix 7), Exide maintains groundwater sampling data and reports in the facility record.

- D. The administrative authority will specify the frequencies for collecting samples and conducting statistical tests to determine whether there is statistically significant evidence of contamination for any parameter or hazardous constituent specified in the permit under LAC 33:V.3317.A in accordance with LAC 33:V.3315.G. A sequence of at least four samples from each well (background and**

compliance wells) must be collected at least semi-annually during detection monitoring.

Response

As indicated in the Post-Closure Permit and the Groundwater Sampling and Analysis Plan (Appendix 7), At a minimum, four sampling events will be used to establish background levels for the monitoring parameters. Sampling events are conducted semi-annually. A statistical procedure for the evaluation of groundwater monitoring data will be selected after sufficient background monitoring data has been collected.

- E. The owner or operator must use procedures and methods for sampling and analysis that meet the requirements of LAC 33:V.3315.D and E.

Response

Exide acknowledges this requirement and will comply. The procedures and methods for sampling and analysis are provided in the Groundwater Sampling and Analysis Plan in Appendix 7.

- F. The owner or operator must determine whether there is statistically significant evidence of contamination for any chemical parameter or hazardous constituent specified in the permit pursuant to LAC 33:V.3317.A at a frequency specified under LAC 33:V.3317.D.

1. In determining whether statistically significant evidence of contamination exists, the owner or operator must use the method(s) specified in the permit under LAC 33:V.3315.H. These method(s) must compare data collected at the compliance point(s) to the background ground water quality data.

Response

Exide acknowledges this requirement and will comply. A statistical procedure for the evaluation of groundwater monitoring data will be selected after sufficient background monitoring data has been collected.

2. The owner or operator must determine whether there is statistically significant evidence of contamination at each monitoring well at the compliance point within a reasonable period of time after completion of sampling. The administrative authority will specify in the facility permit what period is reasonable, after considering the complexity of the statistical test and the availability of laboratory facilities to perform the analysis of ground water samples.

Response

As indicated in the Post-Closure Permit, Exide will submit a semi-annual report within 15 days after completing the analytical work and review of analyses and computations. The semi-annual report will include statistical comparative data once a statistical procedure has been selected.

- G. If the owner or operator determines pursuant to LAC 33:V.3317.F that there is statistically significant evidence of contamination for chemical parameters or hazardous constituents specified pursuant to LAC 33:V.3317.A at any monitoring well at the compliance point, he or she must do the following.

1. Notify the administrative authority of this finding in writing within seven days. The notification must indicate what chemical parameters or hazardous constituents have shown statistically significant evidence of contamination.

Response

Exide acknowledges this requirement and will comply.

2. Immediately sample the ground water in all monitoring wells and determine whether constituents listed in LAC 33:V.3325.Table 4 are present, and if so, in what concentrations.

Response

Exide acknowledges this requirement and will comply.

3. For any LAC 33:V.3325 compounds found in the analysis pursuant to LAC 33:V.3317.G.2, the owner or operator may resample within one month and repeat the analysis for those compounds detected. If the results of the second analysis confirm the initial results, then these constituents will form the basis for compliance monitoring. If the owner or operator does not resample for the compounds found pursuant to LAC 33:V.3317.G.2, the hazardous constituents found during this initial LAC 33:V.3325.Table 4 analysis will form the basis for compliance monitoring.

Response

Exide acknowledges this requirement and will comply.

4. Within 90 days, submit to the Office of Environmental Services, Permits Division an application for a permit modification to establish a compliance monitoring program meeting the requirements of LAC 33:V.3319. The application must include the following information:
 - a. an identification of the concentration of any LAC 33:V.3325.Table 4 constituent detected in the ground water at each monitoring well at the compliance point;
 - b. any proposed changes to the ground water monitoring system at the facility necessary to meet the requirements of LAC 33:V.3319;
 - c. any proposed additions or changes to the monitoring frequency, sampling and analysis procedures or methods, or statistical methods used at the facility necessary to meet the requirements of LAC 33:V.3319;
 - d. for each hazardous constituent detected (as defined in LAC 33:V.3301.A.1) at the compliance point, a proposed concentration limit under LAC 33:V.3309.A.3.a or b, or a notice of intent to seek an alternate concentration limit under LAC 33:V.3309.B.

Response

Exide acknowledges this requirement and will comply.

5. **Within 180 days, submit to the Office of Environmental Services, Permits Division:**
 - a. **all data necessary to justify an alternate concentration limit sought under LAC 33:V.3309.B; and**
 - b. **an engineering feasibility plan for a corrective action program necessary to meet the requirement of LAC 33:V.3321, unless:**
 - i. **all hazardous constituents identified under LAC 33:V.3317.G.2 are listed in Table 1 of LAC 33:V.3309, and their concentrations do not exceed the respective values given in that table; or**
 - ii. **the owner or operator has sought an alternate concentration limit under LAC 33:V.3309.B for every hazardous constituent identified under LAC 33:V.3317.G.2.**

Response

Exide acknowledges this requirement and will comply.

6. **If the owner or operator determines, pursuant to LAC 33:V.3317.F, that there is a statistically significant difference for chemical parameters or hazardous constituents specified pursuant to LAC 33:V.3317.A at any monitoring well at the compliance point, he or she may demonstrate that a source other than a regulated unit caused the contamination or that the detection is an artifact caused by an error in sampling, analysis, or statistical evaluation or natural variation in the ground water. The owner or operator may make a demonstration under this Paragraph in addition to, or in lieu of, submitting a permit modification application under LAC 33:V.3317.G.4; however, the owner or operator is not relieved of the requirement to submit a permit modification application within the time specified in LAC 33:V.3317.G.4 unless the**

demonstration made under this Paragraph successfully shows that a source other than a regulated unit caused the increase, or that the increase resulted from error in sampling, analysis, or evaluation. In making a demonstration under this Paragraph, the owner or operator must:

- a. notify the Office of Environmental Services, Permits Division in writing within seven days of determining statistically significant evidence of contamination at the compliance point that he or she intends to make a demonstration under this Paragraph;**
- b. within 90 days, submit a report to the Office of Environmental Services, Permits Division that demonstrates that a source other than a regulated unit caused the contamination or that the contamination resulted from error in sampling, analysis, or evaluation;**
- c. within 90 days, submit to the administrative authority an application for a permit modification to make any appropriate changes to the detection monitoring program facility; and**
- d. continue to monitor in accordance with the detection monitoring program established under this Section.**

Response

Exide acknowledges this requirement and will comply.

- H. If the owner or operator determines that the detection monitoring program no longer satisfies the requirements of this Section, he or she must, within 90 days, submit an application for a permit modification to make any appropriate changes to the program.**

Response

Exide acknowledges this requirement and will comply.

§3319. Compliance Monitoring Program

[NOTE: An owner or operator required to establish a compliance monitoring program under this Chapter must, at a minimum, discharge the following responsibilities.]

A. The owner or operator must monitor the ground water to determine whether regulated units are in compliance with the ground water protection standard under LAC 33:V.3305. The administrative authority will specify the ground water protection standard in the facility permit, including:

- 1. a list of the hazardous constituents identified under LAC 33:V.3307;**
- 2. concentration limits under LAC 33:V.3309 for each of those hazardous constituents;**
- 3. the compliance point under LAC 33:V.3311; and**
- 4. the compliance period under LAC 33:V.3313.**

Response

Exide acknowledges the requirements of this Subchapter; however Exide is not conducting a compliance monitoring program. Exide conducts a detection monitoring program and will comply with this Subchapter if a compliance monitoring program is required.

- B. The owner or operator must install a ground water monitoring system at the compliance point as specified under LAC 33:V.3311. The ground water monitoring system must comply with LAC 33:V.3315.A.2, B, and C.**
- C. The administrative authority will specify the sampling procedures and statistical methods appropriate for the constituents and the facility, consistent with LAC 33:V.3315.G and H.**

1. The owner or operator must conduct a sampling program for each chemical parameter or hazardous constituent in accordance with LAC 33:V.3315.G.
 2. The owner or operator must record ground water analytical data as measured and in the form necessary for the determination of statistical significance under LAC 33:V.3315.H for the compliance period of the facility.
- D. The owner or operator must determine whether there is statistically significant evidence of increased contamination for any chemical parameter or hazardous constituent specified in the permit, pursuant to LAC 33:V.3319.A at a frequency specified under LAC 33:V.3319.F.
1. In determining whether statistically significant evidence of increased contamination exists, the owner or operator must use the method(s) specified in the permit under LAC 33:V.3315.H. The method(s) must compare data collected at the compliance point(s) to a concentration limit developed in accordance with LAC 33:V.3309.
 2. The owner or operator must determine whether there is statistically significant evidence of increased contamination at each monitoring well at the compliance point within a reasonable period after completion of sampling. The administrative authority will specify that period in the facility permit, after considering the complexity of the statistical test and the availability of laboratory facilities to perform the analysis of ground water samples.
- E. The owner or operator must determine the groundwater flow rate and direction in the uppermost aquifer at least annually.
- F. The administrative authority will specify the frequencies for collecting samples and conducting statistical tests to determine statistically significant evidence of increased contamination in accordance with LAC 33:V.3315.G. A sequence of at least four samples from each well (background and compliance wells) must be collected at least semi-annually during the compliance period of the facility.

- G. The owner or operator must analyze samples from all monitoring wells at the compliance point for all constituents listed in LAC 33:V.3325.Table 4 at least annually to determine whether additional hazardous constituents are present in the uppermost aquifer and, if so, at what concentration, pursuant to procedures in LAC 33:V.3317.F. If the owner or operator finds LAC 33:V.3325.Table 4 constituents in the groundwater that are not already identified in the permit as monitoring constituents, the owner or operator may resample within one month and repeat the LAC 33:V.3325.Table 4 analysis. If the second analysis confirms the presence of new constituents, the owner or operator must report the concentrations of these additional constituents to the administrative authority within seven days after the completion of the second analysis and add them to the monitoring list. If the owner or operator chooses not to resample, then he or she must report the concentrations of these additional constituents to the administrative authority within seven days after completion of the initial analysis and add them to the monitoring list.**
- H. If the owner or operator determines, pursuant to LAC 33:V.3319.D, that any concentration limits under LAC 33:V.3309 are being exceeded at any monitoring well at the point of compliance, he or she must:**
- 1. notify the Office of Environmental Services, Permits Division of this finding in writing within seven days. The notification must indicate what concentration limits have been exceeded; and**
 - 2. submit, to the Office of Environmental Services, Permits Division, an application for a permit modification to establish a corrective action program meeting the requirements of LAC 33:V.3321 within 180 days, or within 90 days if an engineering feasibility study has been previously submitted to the administrative authority under LAC 33:V.3317.H.5. The application must at a minimum include the following information:**
 - a. a detailed description of corrective actions that will achieve compliance with the groundwater protection standard specified in the permit under LAC 33:V.3319.A; and**

- b. a plan for a groundwater monitoring program that will demonstrate the effectiveness of the corrective action. Such a groundwater monitoring program may be based on a compliance monitoring program developed to meet the requirements of this Section.**
- I. If the owner or operator determines, pursuant to LAC 33:V.3319.D, that the groundwater concentration limits under this Section are being exceeded at any monitoring well at the point of compliance, he or she may demonstrate that a source other than a regulated unit caused the contamination or that the detection is an artifact caused by an error in sampling, analysis, or statistical evaluation or natural variation in the groundwater. In making a demonstration under this Subsection, the owner or operator must:**
 - 1. notify the Office of Environmental Services, Permits Division in writing within seven days that he intends to make a demonstration under this Paragraph;**
 - 2. within 90 days, submit a report to the Office of Environmental Services, Permits Division which demonstrates that a source other than a regulated unit caused the standard to be exceeded or that the apparent noncompliance with the standards resulted from error in sampling, analysis or evaluation;**
 - 3. within 90 days, submit to the Office of Environmental Services, Permits Division an application for a permit modification to make any appropriate changes to the compliance monitoring program at the facility; and**
 - 4. continue to monitor in accord with the compliance monitoring program established under this Chapter.**
- J. If the owner or operator determines that the compliance monitoring program no longer satisfies the requirements of this Section, he must, within 90 days, submit to the Office of Environmental Services, Permits Division an application for a permit modification to make any appropriate changes to the program.**

§3321. Corrective Action Program

[NOTE: An owner or operator required to establish a corrective action program under this Subpart must, at a minimum, discharge the following responsibilities.]

- A. The owner or operator must take corrective action to ensure that regulated units are in compliance with the groundwater protection standard under LAC 33:V.3305. The administrative authority will specify the groundwater protection standard in the facility permit, including:**

Response

Exide acknowledges the requirements of this Subchapter; however Exide is not conducting a corrective action program. Exide conducts a detection monitoring program and will comply with this Subchapter if a corrective action program is required.

- 1. a list of the hazardous constituents identified under LAC 33:V.3307;**
 - 2. concentration limits under LAC 33:V.3309 for each of those hazardous constituents;**
 - 3. the compliance point under LAC 33:V.3311; and**
 - 4. the compliance period under LAC 33:V.3313.**
- B. The owner or operator must implement a corrective action program that prevents hazardous constituents from exceeding their respective concentration limits at the compliance point by removing the hazardous waste constituents or treating them in place. The permit will specify the specific measures that will be taken.**
- C. The owner or operator must begin corrective action within a reasonable time period after the groundwater protection standard is exceeded. The administrative authority will specify that time period in the facility permit. If a facility permit includes a corrective action program in addition to a compliance monitoring program, the permit**

will specify when the corrective action will begin and such a requirement will operate in lieu of LAC 33:V.3319.1.2.

- D.** In conjunction with a corrective action program, the owner or operator must establish and implement a groundwater monitoring program to demonstrate the effectiveness of the corrective action program. Such a monitoring program may be based on the requirements for a compliance monitoring program under LAC 33:V.3319 and must be as effective as that program in determining compliance with the groundwater protection standard under LAC 33:V.3305 and in determining the success of a corrective action program under LAC 33:V.3321.E, where appropriate.
- E.** in addition to the other requirements of this Section, the owner or operator must conduct a corrective action program to remove or treat in place any hazardous constituents under LAC 33:V.3307 that exceed concentration limits under LAC 33:V.3309 in groundwater:
- 1.** between the compliance point under LAC 33:V.3311 and the downgradient facility property boundary; and
 - 2.** beyond the facility boundary, where necessary to protect human health and the environment, unless the owner or operator demonstrates to the satisfaction of the administrative authority that, despite the owner's or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake such action. The owner/operator is not relieved of all responsibility to clean up a release that has migrated beyond the facility boundary where off-site access is denied. On-site measures to address such releases will be determined on a case-by-case basis;
 - 3.** corrective action measures under this Subsection must be initiated and completed within a reasonable period of time considering the extent of contamination;
 - 4.** corrective action measures under this Subsection may be terminated once the concentration of hazardous constituents under LAC 33:V.3307 is reduced to levels below their respective concentration limits under LAC 33:V.3309.

- F. The owner or operator must continue corrective action measures during the compliance period to the extent necessary to ensure that the groundwater protection standard is not exceeded. If the owner or operator is conducting corrective action at the end of the compliance period, he must continue that corrective action for as long as necessary to achieve compliance with the groundwater protection standard. The owner or operator may terminate corrective action measures taken beyond the period equal to the active life of the waste management area (including the closure period) if he can demonstrate, based on data from the groundwater monitoring program under LAC 33:V.3321.D, that the groundwater protection standard of LAC 33:V.3305 has not been exceeded for a period of three consecutive years.**
- G. The owner or operator must report in writing to the Office of Environmental Assessment, Remediation Services Division on the effectiveness of the corrective action program. The owner or operator must submit these reports semi-annually; and**
- H. if the owner or operator determines that the corrective action program no longer satisfies the requirements of this Section, he must, within 90 days, submit to the Office of Environmental Services, Permits Division an application for a permit modification to make any appropriate changes to the program.**

§3322. Corrective Action

- A. The owner or operator of a facility seeking a permit for the treatment, storage, or disposal of hazardous waste must institute corrective action as necessary to protect human health and the environment for all releases of hazardous waste or constituents from any solid waste management unit at the facility, regardless of the time at which waste was placed in such unit.**

Response

Exide acknowledges the requirements of this Subchapter; however, Exide is not conducting a corrective action. Exide conducts a detection monitoring program and will comply with this Subchapter if a corrective action is required.

- B. Corrective action will be specified in the permit in accordance with LAC 33:V.2601 and 3322. The permit will contain schedules of compliance for such corrective action (where such corrective action cannot be completed prior to issuance of the permit) and assurances of financial responsibility for completing such corrective action.**
- C. The owner or operator must implement corrective actions beyond the facility property boundary, where necessary to protect human health and the environment, unless the owner or operator demonstrates to the satisfaction of the administrative authority that, despite the owner's or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake such actions. The owner or operator is not relieved of all responsibility to clean up a release that has migrated beyond the facility boundary where off-site access is denied. On-site measures to address such releases will be determined on a case-by-case basis. Assurances of financial responsibility for such corrective action must be provided.**
- D. Any risk-assessment-based corrective action must be protective of human health and the environment in accordance with LAC 33:1.Chapter 13.**
- E. This Section does not apply to remediation waste management sites unless they are part of a facility subject to a permit for treating, storing, or disposing of hazardous wastes that are not remediation wastes.**

§3323. Monitoring Well Abandonment and Sealing of Bore Holes

[NOTE: An owner or operator shall provide for the sealing of any vertical migration path resulting from exploratory boring and/or monitoring programs.]

- A. Any boring made in evaluating a site, monitoring, or other purpose related to the hazardous waste site shall be completely filled with cement-bentonite, or other equivalent technology approved by the administrative authority. The hole shall be left open only as necessary to obtain core samples, water samples and establish the initial water level. If subsequent samples or water level readings are to be taken, the hole shall be completed as a well with suitable casing and sealing of the annulus between the hole and the casing.**

Response

Exide acknowledges this citation and will comply.

- B. When a monitoring well is to be abandoned, the owner or operator shall obtain approval for such abandonment. A request shall be made to the administrative authority, including the following information:**

- 1. name and address of the facility;**
- 2. well identification and exact location;**
- 3. well construction data, including:**
 - a. well depth and intermediate stratification;**
 - b. screen length and material;**
 - c. casing size and material**
 - d. sealing of the annulus; and**
 - e. other pertinent data;**
- 4. reason for abandonment; and**
- 5. proposed abandonment method, including sealing method and material proposed.**

Response

Exide acknowledges this citation and will comply.

- C. The administrative authority may accept the proposal or require modification as necessary to protect groundwater.**

Response

Exide acknowledges this citation and will comply.

- D. For any monitoring well which goes through or into a recognized potable water aquifer, and any well which the administrative authority feels could directly impact such aquifer, the owner or operator shall additionally complete and submit an abandonment report as required by the Water Resources Section of the Office of Public Works in the Department of Transportation and Development, or its successor agency.

Response

Exide acknowledges this citation and will comply.

§3325. Ground Water Monitoring List ¹

Table 4 lists ground water monitoring constituents.

Response

Exide acknowledges this Subchapter and will comply.

¹ The regulatory requirements pertain only to the list of substances; the right-hand columns (Methods and PQL) are given for informational purposes only. See also footnotes 5 and 6.

² Common names are those widely used in government regulations, scientific publications, and commerce; synonyms exist for many chemicals.

³ Chemical Abstracts Service registry number. Where "Total" is entered, all species in the ground water that contain this element are included.

⁴ CAS Index names are those used in the ninth Cumulative Index.

⁵ Suggested Methods refer to analytical procedure numbers used in EPA Report SW-846, *Test Methods for Evaluating Solid Waste*, Third Edition. Analytical details can be found in SW-846 and in documentation on file at the agency. The packed column gas chromatography methods 8010, 8020, 8030, 8040, 8060, 8080, 8090, 8110, 8120, 8140, 8150, 8240, and 8250 were promulgated methods through Update IIB of SW-846 and, as of Update III, the agency has replaced these methods with "capillary column GC methods," as the suggested methods.

Caution: The methods listed are representative SW-846 procedures and may not always be the most suitable method(s) for monitoring an analyte under the regulations.

⁶ **Practical Quantitation Limits (PQLs)** are the lowest concentrations of analytes in ground waters that can be reliably determined within specified limits of precision and accuracy by the indicated methods under routine laboratory operating conditions. The PQLs listed are generally stated to one significant figure. **Caution:** The PQL values in many cases are based only on a general estimate for the method and not on a determination for individual compounds; PQLs are not a part of the regulation.

⁷ **Polychlorinated biphenyls (CAS RN 1336-36-3);** this category contains congener chemicals, including constituents of Aroclor-1016 (CAS RN 12674-11-2), Aroclor-1221 (CAS RN 11104-28-2), Aroclor-1232 (CAS RN 11141-16-5), Aroclor-1242 (CAS RN 53469-21-9), Aroclor-1248 (CAS RN 12672-29-6), Aroclor-1254 (CAS RN 11097-69-1), and Aroclor-1260 (CAS RN 11096-82-5). The PQL shown is an averaged value for PCB congeners.

⁸ This category contains congener chemicals, including tetrachlorodibenzo-p-dioxins (see also 2,3,7,8-TCDD), pentachlorodibenzo-p-dioxins, and hexachlorodibenzo-p-dioxins. The PQL shown is an average value for PCDD congeners.

⁹ This category contains congener chemicals, including tetrachlorodibenzofurans, pentachlorodibenzofurans, and hexachlorodibenzofurans. The PQL shown is an average value for PCDF congeners.



CHAPTER 35

CLOSURE AND POST-CLOSURE

Exide acknowledges and will abide by all of the requirements for closure and post – closure, applicable for the containment buildings found in this Chapter. The Closure and Post – Closure Plan is included in detail in Appendix 8.

Title 33
ENVIRONMENTAL QUALITY
Part V. Hazardous Waste and Hazardous Materials

Chapter 35. Closure and Post-Closure

§3501. Applicability

- A. Closure and post-closure procedures ensure protection of the public and ecology against leakage of hazardous wastes to the environment from closed facilities which formerly stored, treated; and/or disposed of such wastes.**

Response

Exide acknowledges the requirements of this section and will comply. Exide's Closure and Post-Closure Plan (Appendix 8) addresses closure of the hazardous waste units including the Slag Stabilization Unit, the Truck/Trailer Storage Area, the Whole Battery Storage Area, the K069/D008 Storage Area, and the Containment Building. The two Hazardous Waste Piles were closed in-place in 1985 and 1986 and are maintained in accordance with the Post-Closure Permit.

- B. Except as LAC 33:V.1501 provides otherwise, LAC 33:V.3503-3517 (which concern closure) apply to all hazardous waste facilities in operation or under construction as of the effective date of LAC 33:V.Subpart 1 and to all hazardous waste facilities permitted under LAC 33:V.Subpart 1, as applicable.**

Response

Exide acknowledges the requirements of this section and will comply.

- C. LAC 33:V.3519, 3521, 3523, 3525 and 3527 (post-closure care) apply to the owners and operators of:**

- 1. all hazardous waste disposal facilities;**

Response

Exide is not a hazardous waste disposal facility; however, Exide maintains a Post-Closure Permit for two closed hazardous waste piles. Exide acknowledges the requirements of this section and will comply.

- 2. waste piles, surface impoundments, or any facility from which the owner or operator intends to remove waste at closure, to**

the extent that these sections are made applicable to such facilities in LAC 33:V.2315 and 2911;

Response

Exide does not have waste piles, surface impoundments or any facility from which the waste will be removed at closure; therefore this section does not apply.

3. **tank systems that are required under LAC 33:V.1915 to meet the requirements for landfills; and**

Response

Exide does not store hazardous waste in tanks; therefore this section does not apply.

4. **containment buildings that are required under LAC 33:V.1803 to meet the requirements for landfills.**

Response

Exide operates a containment building. If it is determined during closure that the containment building must meet the requirements for landfills, then Exide will comply with the requirements of this section.

- D. **The administrative authority may replace all or part of the requirements of this Chapter (and the unit-specific standards referenced in LAC 33:V.3507.A.3 applying to a regulated unit), with alternative requirements set out in a permit or in an enforceable document (as defined in LAC 33:V.305.H), where the administrative authority determines that:**

1. **the regulated unit is situated among solid waste management units (or areas of concern), a release has occurred, and both the regulated unit and one or more solid waste management unit(s) (or areas of concern) are likely to have contributed to the release; and**
2. **it is not necessary to apply the closure requirements of this Chapter (and those referenced herein) because the alternative requirements will protect human health and the environment and will satisfy the closure performance standard of LAC 33:V.3507.A.1 and 2.**

Response

Exide acknowledges the requirements of this citation and will comply.

§3503. Notification of Intention to Close a Facility

- A. At least 180 days prior to closure, the operator must notify the Office of Environmental Services, Permits Division of intention to close and supply the following information:**

- 1. date of planned closure;**
- 2. requested changes, if any, in the closure plan submitted with the permit application, which take advantage of new technology, unforeseen situations, and other requests which improve the safety of the closed facility;**
- 3. closure schedule and estimated costs of each phase of the closure plan; and**
- 4. request for release of closure funds in amounts and times as required by the closure schedules.**

Response

Exide acknowledges the requirements of this subchapter and will comply.

Subchapter A. Closure Requirements

§3505. Closure Procedures

- A. If closure methods are unchanged from the plan approved with the permit, the administrative authority will acknowledge receipt of the notification to close and prepare appropriate documents which will be executed upon completion and acceptance of each phase of the closure plan so that funds can be released.**

Response

Exide acknowledges the requirements of this section and will comply.

- B. If the request is made to change the closure plan, the operator will submit revisions to the plan to the Office of Environmental Services, Permits Division, supported by necessary scientific and engineering data to permit evaluation by the department, and the procedures established in permit process will be followed in evaluating and approving the requested changes.**

Response

Exide acknowledges the requirements of this section and will comply. No changes to the closure plan are anticipated at this time. Revisions were made to the closure plan in July 2002 in response to LDEQ's comments

on the Permit Modification Request dated October 17, 2001. Revisions included adding the proposed containment building upgrades and increasing costs associated with sampling through the proposed acid brick floor at the containment building.

§3507. Closure Performance Standards

A. In accordance with LAC 33:V.3509, the owner or operator must close his facility in a manner that:

- 1. minimizes the need for further maintenance; and**

Response

Exide acknowledges this provision and will comply. By clean closing the hazardous waste units, no hazardous waste or waste residual will be left at the units and further maintenance will not be required.

Exide has already closed the two Hazardous Waste Piles in a manner that minimized the need for further maintenance while allowing closure in-place. Exide implements a Post-Closure Plan for the waste piles including scheduled inspections, cap maintenance and groundwater monitoring. Post-Closure care activities are detailed in the Post-Closure Permit and the Closure and Post-Closure Plan in Appendix 8.

- 2. controls, minimizes, or eliminates, to the extent necessary to prevent threats to human health and the environment, post-closure escape of hazardous waste, hazardous waste constituents, leachate, contaminated rainfall, or waste decomposition products to the groundwater, surface waters, or to the atmosphere; and**

Response

Clean closure of the hazardous waste units will eliminate the threat to human health and environment as hazardous waste will not remain.

The closed hazardous waste piles have clay caps and liners which minimize the threat to human health and the environment by enclosing the waste.

- 3. complies with closure requirements of this Chapter, including, but not limited to, the requirements of LAC 33:V.1803, 1911, 1915, 2117, 2315, 2521, 2719, 2911, 3121, and 3203-3207.**

Response

Exide acknowledges the requirement of this citation and will comply.

- B. As a means of satisfying the closure requirements of Paragraph A.2 of this Section, the owner or operator may demonstrate an alternative risk-assessment-based closure in accordance with LAC 33:I.Chapter 13.**

Response

Exide has not requested an alternative risk-assessment-based closure in accordance with LAB 33:I.Chapter 13; therefore, this citation does not apply.

§3509. Closure Financial Responsibility

- E. The operator shall submit, with the permit application, a closure plan which provides the estimated cost of closure, and post-closure monitoring including long-term monitoring devices, and the number of years of estimated operation before closure, and which is designed to minimize the need for future maintenance and to ensure against leakage or escape of hazardous waste.**

Response

Exide's Closure and Post Closure Plan is provided in Appendix 8. The plan includes closure procedures and cost estimates for the hazardous waste units (i.e., K069/D008 storage area, Truck/Trailer storage area, Whole Battery Storage area, Slag Stabilization area and Containment Building), and post-closure monitoring procedures and cost estimates for the closed hazardous waste piles. Closure costs were developed assuming a third party contractor or consultant would conduct the closure. The facility was opened in 1969. The final closure date of the facility has not yet been determined. For permitting purposes, the approximate timeframe that the facility is expected to continue operation is until the year 2021.

Post-closure activities will not be required for the hazardous waste units as they will be clean closed. Post-closure activities for the hazardous waste piles include scheduled inspections, cap maintenance and groundwater monitoring.

Closure procedures for the hazardous waste units includes shipment of remaining wastes (slag, batteries, battery components, and drums of waste) off-site for disposal at a permitted facility or recycling at a lead smelter. The units will be decontaminated with steam cleaners. Wash water will be collected and transported for off-site disposal. Samples of

wash water will be collected and analyzed for lead to determine if the decontamination process was complete. Confirmatory samples will be collected for total lead analysis by drilling through the floor systems. A certification report stating that the unit was closed in accordance with the approved closure plan will be prepared for each unit and certified by an independent registered professional engineer.

- B. The operator shall create a "closure fund" under the requirements in LAC 33:V.Chapters 35 and 37.**

Response

Exide acknowledges the requirements of this section and will comply.

§3511. Closure Plan; Amendment of Plan

A. Written Plan

- 1. The owner or operator of a hazardous waste management facility must have a written closure plan. In addition, certain surface impoundments and waste piles from which the owner or operator intends to remove or decontaminate the hazardous waste at partial or final closure are required by LAC 33:V.2911.D and 2315.C to have contingent closure plans. The plan must be submitted with the permit application, in accordance with LAC 33:V.517.M and approved by the administrative authority as part of the permit issuance procedures under LAC 33:V.Chapters 3 and 7. In accordance with LAC 33:V.311, the approved closure plan will become a condition of any hazardous waste permit.**

Response

Exide's Closure and Post-Closure Plan is provided in Appendix 8. The plan includes general facility closure procedures; specific clean-closure procedures for the Slag Stabilization Area, the Containment Building, the K069/D009 Storage Area, the Truck Trailer Storage Area and the Whole Battery Storage Area; a closure cost estimate; and post-closure care procedures and costs for the closed hazardous waste piles. Exide does not plan to conduct any partial closures. The approved plan is a condition of Exide's existing Hazardous Waste Permit for which a renewal is requested.

- 2. The administrative authority's approval of the plan must ensure that the approved closure plan is consistent with LAC 33:V.3507, 3511-3517, and the applicable requirements of LAC 33:V.Chapter 33, 1803, 1911, 1915, 2117, 2315, 2521, 2719, 2911, 3121, and 3203. Until final closure is completed and certified**

in accordance with LAC 33:V.3517, a copy of the approved plan and all approved revisions must be furnished to the administrative authority upon request, including request by mail.

Response

Exide acknowledges this requirement and will comply.

B. Content of Plan. The plan must identify steps necessary to perform partial and/or final closure of the facility at any point during its active life. The closure plan must include, at least:

- 1. a description of how each hazardous waste management unit at the facility will be closed in accordance with LAC 33:V.3507;**

Response

Exide does not anticipate partial closure of any units. Each unit will be clean-closed after termination of facility operations.

The Closure and Post Closure Plan is provided in Appendix 8. Closure procedures for the hazardous waste units include shipment of remaining wastes off-site for disposal at a permitted facility or recycling at a lead smelter. Slag will be sent off-site for disposal. Batteries, battery components, lead-bearing materials, and drums stored at the K069/D008 area will be transported to another lead smelter for recycling. The units will be decontaminated with steam cleaners. Wash water will be collected and transported for off-site disposal. Samples of wash water will be collected and analyzed for lead to determine if the decontamination process was complete. Confirmatory samples will be collected for total lead analysis by drilling through the floor systems. A certification report stating that the unit was closed in accordance with the approved closure plan will be prepared for each unit and certified by an independent registered professional engineer.

- 2. a description of how final closure of the facility will be conducted in accordance with LAC 33:V.3507. The description must identify the maximum extent of the operations which will be unclosed during the active life of the facility; and**

Response

Final clean-closure of the facility's hazardous waste units will minimize the need for further maintenance and eliminate threat to human health and the environment as no hazardous wastes or residues will remain at the facility. It is anticipated that the hazardous waste units (Slag Stabilization Unit, storage areas and

Containment Building) will continue to operate for the lifetime of the facility.

The clay cap and liner of the closed hazardous waste piles minimizes post-closure escape of hazardous waste by enclosing the waste materials. The groundwater detection monitoring program also monitors the area for escape of hazardous waste into the groundwater.

3. **an estimate of the maximum inventory of hazardous wastes ever on-site over the active life of the facility and a detailed description of the methods to be used during partial closures and final closure, including, but not limited to, methods for removing, transporting, treating, storing, or disposing of all hazardous wastes, and identification of the type(s) of the off-site hazardous waste management units to be used, if applicable; and**

Response

The maximum inventory of hazardous wastes over the active life of the facility is:

Slag Stabilization Unit	144.4 tons
Containment Building - slag	3,333 tons
Containment Building – other materials	12,080 tons
K069/D008 Storage Area	29,920 gallons
Truck/Trailer Storage Area	85,000 gallons
Whole Battery Storage Area	81,000 gallons

Closure procedures for the hazardous waste units include shipment of remaining wastes off-site for disposal at a permitted facility or recycling at a lead smelter. Slag will be sent off-site for disposal. Slag will be removed with a front-end loader and placed into lined end-dump trailers. Battery components and lead-bearing materials will be removed with a front-end loader and placed into lined end-dump trailers for transport to another lead smelter for recycling. Batteries and drums stored at the K069/D008 area will be loaded into vehicles with a fork lift and transported to another lead smelter for recycling. The Closure and Post Closure Plan is provided in Appendix 8.

4. **a detailed description of the steps needed to remove or decontaminate all hazardous waste residues and contaminated containment system components, equipment, structures, and soils during partial and final closure, including, but not limited to, procedures for cleaning equipment and removing**

contaminated soils, methods for sampling and testing surrounding soils, and criteria for determining the extent of decontamination required to satisfy the closure performance standard;

Response

The units will be decontaminated with steam cleaners to remove residues. Front end loaders used to load wastes will also be decontaminated. The wash water will be collected in trailers and transported for off-site disposal. Samples of the wash water will be collected and analyzed for lead to determine if the decontamination process is complete. Personnel will wear appropriate personal protective equipment including respirators with particle cartridges, tyvek suits, gloves and hard hats with splashguards.

Soil samples will be collected by drilling through the floor systems at each unit. A total of 120 soil samples will be collected for lead analysis. A certification report will be prepared for each unit and certified by an independent registered professional engineer, stating the facility was closed in accordance with the approved closure plan. The Closure and Post-Closure Plan is provided in Appendix 8.

5. a detailed description of other activities necessary during the closure period to ensure that all partial closures and final closure satisfy the closure performance standards, including, but not limited to, ground water monitoring, leachate collection, and run-on and run-off control;

Response

During the closure period, groundwater monitoring and leachate collection will not be conducted as clean-closure will occur and the units do not have leachate collection systems. Run-on and run-off control will be provided at each unit by the perimeter berms and floor slopes.

6. a schedule for closure of each hazardous waste management unit and for final closure of the facility. The schedule must include, at a minimum, the total time required to close each hazardous waste management unit and the time required for intervening closure activities which will allow tracking of the progress of partial and final closure (for example, in the case of a landfill, unit estimates of the time required to treat or dispose of all hazardous waste inventory and of the time required to place a final cover must be included); and

Response

Exide anticipates that the hazardous waste management units will operate for the lifetime of the facility. Waste removal will occur within 90 days after receiving the final volume of hazardous waste. The closure plan will be completed within 6 months of receiving the final volume of hazardous waste.

7. for facilities that use trust funds to establish financial assurance LAC 33:V.3707 and 3711 and that are expected to close prior to the expiration of the permit, an estimate of the expected year of final closure; and

Response

Exide is not anticipated to close prior to the expiration of the renewed permit; therefore this section does not apply.

8. for facilities where the administrative authority has applied alternative requirements at a regulated unit under LAC 33:V.3301.G, 3501.D, and/or 3701.D, either the alternative requirements applying to the regulated unit or a reference to the enforceable document containing those alternative requirements.

Response

Exide does not have alternative requirements for the regulated units; therefore, this section does not apply.

- C. **Amendment of Plan.** The owner or operator must submit to the Office of Environmental Services, Permits Division a written notification of or request for a permit modification to authorize a change in operating plans, facility design, or the approved closure plan in accordance with the applicable procedures in LAC 33:V.Chapters 3 and 7. The written notification or request must include a copy of the amended closure plan for review or approval by the administrative authority.

Response

Exide acknowledges this citation and will comply. Exide submitted a permit modification in October 2001 to propose upgrades to the containment building floor system and include the containment building in the permit. The modification included a amended closure plan. Comments on the modification request were received from LDEQ in March 2003. The modification request has not yet been approved, but the modifications are included in this renewal application.

1. The owner or operator may submit a written notification or request to the to the Office of Environmental Services, Permits Division for a permit modification to amend the closure plan at any time prior to the notification of partial or final closure of the facility.

Response

Exide acknowledges this citation and will comply.

2. The owner or operator must submit a written notification of or request for a permit modification to authorize a change in the approved closure plan whenever:
 - a. changes in operating plans or facility design affect the closure plan; or
 - b. there is a change in the expected year of closure, if applicable; or
 - c. in conducting partial or final closure activities, unexpected events require a modification of the approved closure plan.

Response

Exide acknowledges this citation and will comply.

3. The owner or operator must submit to the Office of Environmental Services, Permits Division a written request for a permit modification including a copy of the amended closure plan for approval at least 60 days prior to the proposed change in facility design or operation, or no later than 60 days after an unexpected event has occurred which has affected the closure plan. If an unexpected event occurs during the partial or final closure period, the owner or operator must request a permit modification no later than 30 days after the unexpected event. An owner or operator of a surface impoundment or waste pile that intends to remove all hazardous waste at closure and is not otherwise required to prepare a contingent closure plan under LAC 33:V.2911.D or 2315.D must submit an amended closure plan to the Office of Environmental Services, Permits Division no later than 60 days from the date that the owner or operator or administrative authority determines that the hazardous waste management unit must be closed as a landfill, subject to the requirements of LAC 33:V.2521, or no later than 30 days from that date if the determination is made during partial closure or final closure. The administrative

authority will approve, disapprove, or modify this amended plan in accordance with the procedures in LAC 33:V.Chapters 3 and 7. In accordance with LAC 33:V.311, the approved closure plan will become a condition of any hazardous waste permit issued.

Response

Exide acknowledges this citation and will comply.

4. The administrative authority may request modifications to the plan under the conditions described in LAC 33:V.3511.A.2. The owner or operator must submit the modified plan within 60 days of the administrative authority's request, or within 30 days if the change in facility conditions occurs during partial or final closure. Any modifications requested by the administrative authority will be approved in LAC 33:V.Chapters 3 and 7.

Response

Exide acknowledges this citation and will comply.

5. The owner or operator requests the administrative authority to apply alternative requirements to a regulated unit under LAC 33:V.3301.G, 3501.D, and/or 3701.D.

Response

Exide acknowledges this citation; however Exide does not request alternative requirements.

D. Notification of Partial Closure and Final Closure

1. The owner or operator must notify the Office of Environmental Services, Permits Division in writing at least 60 days prior to the date on which he expects to begin closure of a surface impoundment, waste pile, land treatment or landfill unit, or final closure of a facility with such a unit. The owner or operator must notify the Office of Environmental Services, Permits Division in writing at least 45 days prior to the date on which he expects to begin final closure of a facility with only treatment or storage tanks, container storage, or incinerator units to be closed. The owner or operator must notify the Office of Environmental Services, Permits Division in writing at least 45 days prior to the date on which he expects to begin partial or final closure of a boiler or industrial furnace, whichever is earlier.

Response

Exide acknowledges this citation and will comply.

2. The date when he or she "expects to begin closure" must be one of the following:

a. No later than 30 days after the date on which any hazardous waste management unit receives the known final volume of hazardous wastes or, if there is a reasonable possibility that the hazardous waste management unit will receive additional hazardous wastes, no later than one year after the date on which the unit received the most recent volume of hazardous waste. If the owner or operator of a hazardous waste management unit can demonstrate to the administrative authority that the hazardous waste management unit or facility has the capacity to receive additional hazardous wastes and he or she has taken, and will continue to take, all steps to prevent threats to human health and the environment, including compliance with all applicable permit requirements, the administrative authority may approve an extension to this one-year limit.

b. For units meeting the requirements of LAC 33:V.3513.D, no later than 30 days after the date on which the hazardous waste management unit receives the known final volume of non-hazardous wastes, or if there is a reasonable possibility that the hazardous waste management unit will receive additional non-hazardous wastes, no later than one year after the date on which the unit received the most recent volume of non-hazardous wastes. If the owner or operator can demonstrate to the administrative authority that the hazardous waste management unit has the capacity to receive additional non-hazardous wastes and he or she has taken, and will continue to take, all steps to prevent threats to human health and the environment, including compliance with all applicable permit requirements, the administrative authority may approve an extension to this one-year limit.

Response

Exide acknowledges this citation and will comply.

3. If the facility's permit is terminated, or if the facility is otherwise ordered, by judicial decree or final order under R.S. 30:2025, to cease receiving hazardous wastes or to close, then the requirements of this Paragraph do not apply. However, the owner or operator must close the facility in accordance with the deadlines established in LAC 33:V.3513.

Response

Exide acknowledges this citation and will comply.

- E. **Removal of Wastes and Decontamination or Dismantling of Equipment.** Nothing in this Section shall preclude the owner or operator from removing hazardous wastes and decontaminating or dismantling equipment in accordance with the approved partial or final closure plan at any time before or after notification of partial or final closure.

Response

Exide acknowledges this citation and will comply.

§3513. Closure; Time Allowed for Closure

- A. Within 90 days after receiving the final volume of hazardous wastes, or the final volume of non-hazardous wastes if the owner or operator receives administrative authority allowance pursuant to LAC 33:V.3513.D and complies with all applicable requirements in LAC 33:V.3513.D and E, at a hazardous waste management unit or facility, the owner or operator must treat, remove from the facility or unit, or dispose of on-site, all hazardous wastes in accordance with the approved closure plan. The administrative authority may approve a longer period if the owner or operator complies with all applicable requirements for requesting a modification to the permit and demonstrates that:
 1. the activities required to comply with this Paragraph will, of necessity, take longer than 90 days to complete, or
 2. the hazardous waste management unit or facility has the capacity to receive additional hazardous wastes, or has the capacity to receive non-hazardous wastes if the owner or operator receives administrative authority allowance pursuant to LAC 33:V.3513.D and complies with LAC 33:V.3513.D and E, and there is a reasonable likelihood that he or another person will recommence operation of the site, as provided in LAC 33:V.321; and

3. closure of the facility would be incompatible with continued operation of the site; and
4. the owner or operator has taken and will continue to take all steps to prevent threats to human health and the environment.

Response

Exide acknowledges this section and will comply.

- B.** The owner or operator must complete partial and final closure activities in accordance with the approved closure plan and within 180 days after receiving the final volume of hazardous wastes, or the final volume of non-hazardous wastes if the owner or operator complies with all applicable requirements in LAC 33:V.3513.D and E, at the hazardous waste management unit or facility. The administrative authority may approve an extension to the closure period if the owner or operator complies with all applicable requirements for requesting a permit modification and demonstrates that:

1. the partial or final closure activities will, of necessity, take longer than 180 days to complete; or
2. the hazardous waste management unit or facility has the capacity to receive additional hazardous wastes or has the capacity to receive non-hazardous wastes if the owner or operator complies with LAC 33:V.3513.D and E; and
3. there is a reasonable likelihood that he or another person will recommence operation of the hazardous waste management unit within one year, as provided in LAC 33:V.321; and
4. closure of the facility would be incompatible with continued operation of the site; and
5. he has taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed, but inactive hazardous waste management unit including compliance with all applicable permit conditions.

Response

Exide acknowledges this section and will comply.

- C.** The demonstrations referred to in LAC 33:V.3513.A and B must be made as follows:

1. the demonstrations in Subsection A must be made at least 30 days prior to the expiration of the 90-day period in Subsection A; and
3. the demonstration in LAC 33:V.3513.B must be made at least 30 days prior to the expiration of the 180-day period in LAC 33:V.3513.B, unless the owner or operator is otherwise subject to the deadlines in LAC 33:V.3513.D.

Response

Exide acknowledges this section and will comply.

- D. The administrative authority may allow an owner or operator to receive only non-hazardous wastes in a landfill, land treatment, or surface impoundment unit after the final receipt of hazardous wastes at that unit if the following conditions are met.

Response

Exide does not operate hazardous waste landfills, land treatment units or surface impoundments; therefore this section does not apply.

1. The owner or operator requests a permit modification in compliance with all applicable requirements in LAC 33:V.Chapters 1, 3, 5, 7, 27, 31, and 43, and in the permit modification request demonstrates that:
 - a. the unit has the existing design capacity as indicated on the Part I application to receive non-hazardous wastes;
 - b. there is a reasonable likelihood that the owner or operator or another person will receive non-hazardous wastes in the unit within one year after the final receipt of hazardous wastes;
 - c. the nonhazardous wastes will not be incompatible with any remaining wastes in the unit, or with the facility design and operating requirements of the unit or facility under LAC 33:V.Chapters 9, 15, 17, 19, 21, 23, 25, 27, 28, 29, 31, 32, 33, 35, and 37;
 - d. closure of the hazardous waste management unit would be incompatible with continued operation of the unit or facility; and

- e. the owner or operator is operating and will continue to operate in compliance with all applicable permit requirements.
 - 2. The request to modify the permit includes an amended waste analysis plan, groundwater monitoring and response program, human exposure assessment required under LAC 33:V.503.A, and closure and post-closure plans, and updated cost estimates and demonstrations of financial assurance for closure and post-closure care as necessary and appropriate to reflect any changes due to the presence of hazardous constituents in the non-hazardous wastes and changes in closure activities, including the expected year of closure if applicable under LAC 33:V.3511.B.7, as a result of the receipt of non-hazardous wastes following the final receipt of hazardous wastes.
 - 3. The request to modify the permit includes revisions, as necessary and appropriate, to affected conditions of the permit to account for the receipt of non-hazardous wastes following receipt of the final volume of hazardous wastes.
 - 4. The request to modify the permit and the demonstrations referred to in LAC 33:V.3513.D.1 and 2 are submitted to the administrative authority no later than 120 days prior to the date on which the owner or operator of the facility receives the known final volume of hazardous wastes at the unit, or no later than 90 days after the effective date of this rule, whichever is later.
- E. In addition to the requirements in LAC 33:V.3513.D, an owner or operator of a hazardous waste surface impoundment that is not in compliance with the liner and leachate collection system requirements in LAC 33:V.Chapter 29 must do the following.

Response

Exide does not operate a hazardous waste surface impoundment; therefore, this section does not apply.

- 1. Submit to the Office of Environmental Services, Permits Division with the request to modify the permit:
 - a. a contingent corrective measures plan, unless a corrective action plan has already been submitted under LAC 33:V.3319; and

- b. a plan for removing hazardous wastes in compliance with LAC 33:V.3513.E.2.**
- 2. Remove all hazardous wastes from the unit by removing all hazardous liquids and removing all hazardous sludges to the extent practicable without impairing the integrity of the liner(s), if any.**
- 3. Removal of hazardous wastes must be completed no later than 90 days after the final receipt of hazardous wastes. The administrative authority may approve an extension to this deadline if the owner or operator demonstrates that the removal of hazardous wastes will, of necessity, take longer than the allotted period to complete and that an extension will not pose a threat to human health and the environment.**
- 4. If a release that is a statistically significant increase (or decrease in the case of pH) over background values for detection monitoring parameters or constituents specified in the permit or that exceeds the facility's groundwater protection standard at the point of compliance, if applicable, is detected in accordance with the requirements in LAC 33:V.Chapter 33, the owner or operator of the unit:**
 - a. must implement corrective measures in accordance with the approved contingent corrective measures plan required by LAC 33:V.3513.E.1 no later than one year after detection of the release or approval of the contingent corrective measures plan, whichever is later;**
 - b. may continue to receive wastes at the unit following detection of the release only if the approved corrective measures plan includes a demonstration that continued receipt of wastes will not impede corrective action; and**
 - c. may be required by the administrative authority to implement corrective measures in less than one year or to cease the receipt of wastes until corrective measures have been implemented if necessary to protect human health and the environment.**
- 5. During the period of corrective action, the owner or operator shall provide semiannual reports to the administrative authority that describe the progress of the corrective action program, compile all groundwater monitoring data, and**

evaluate the effect of the continued receipt of non-hazardous wastes on the effectiveness of the corrective action.

- 6. The administrative authority may require the owner or operator to commence closure of the unit if the owner or operator fails to implement corrective action measures in accordance with the approved contingent corrective measures plan within one year as required in LAC 33:V.3513.E.4, or fails to make substantial progress in implementing corrective action and achieving the facility's groundwater protection standard or background levels if the facility has not yet established a groundwater protection standard.**
- 7. If the owner or operator fails to implement corrective measures as required in LAC 33:V.3513.E.4, or if the administrative authority determines that substantial progress has not been made pursuant to LAC 33:V.3513.E.6, he or she shall do the following.**
 - a. The administrative authority will notify the owner or operator in writing that the owner or operator must begin closure in accordance with the deadlines in LAC 33:V.3513.A and B, and provide a detailed statement of reasons for this determination.**
 - b. The administrative authority will provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments on the decision no later than 20 days after the date of the notice.**
 - c. If the administrative authority receives no written comments, the decision will become final five days after the close of the comment period. The administrative authority will notify the owner or operator that the decision is final, and that a revised closure plan, if necessary, must be submitted within 15 days of the final notice, and that closure must begin in accordance with the deadlines in LAC 33:V.3513.A and B.**
 - d. If the administrative authority receives written comments on the decision, he or she shall make a final decision within 30 days after the end of the comment period, and provide the owner or operator in writing and the public through a newspaper notice with a detailed statement of reasons for the final decision. If the**

administrative authority determines that substantial progress has not been made, closure must be initiated in accordance with the deadlines in LAC 33:V.3513.A and B.

- e. The final determinations made by the administrative authority under LAC 33:V.3513.E.7.c and d are not subject to administrative appeal.

§3515. Disposal or Decontamination of Equipment, Structures and Soils

- A. During the partial and final closure periods, all contaminated equipment, structures, and soils must be properly disposed of or decontaminated, unless otherwise specified in LAC 33:V.1803, 1915, 2315, 2521, 2719, 2809, and 2911, or under the authority of LAC 33:V.3203 and 3207. By removing any hazardous waste or hazardous constituents during partial and final closure, the owner or operator may become a generator of hazardous waste and must handle that waste in accordance with all applicable requirements of LAC 33:V.Chapter 11.

Response

Exide acknowledges the requirements of this section and will comply. All equipment, structures and soils will be properly disposed of or decontaminated. The waste will be managed as hazardous waste if necessary.

§3517. Certification of Closure

- A. Within 60 days of completion of closure of each hazardous waste surface impoundment, waste pile, land treatment, and landfill unit, and within 60 days of the completion of final closure, the owner or operator must submit to the Office of Environmental Services, Permits Division, by registered mail, a certification that the hazardous waste management unit or facility, as applicable, has been closed in accordance with the specifications in the approved closure plan. The certification must be signed by the owner or operator and by an independent registered professional engineer. Documentation supporting the independent registered professional engineer's certification must be furnished to the administrative authority upon request until he releases the owner or operator from the financial assurance requirements for closure under LAC 33:V.3707.

Response

Exide acknowledges this citation and will comply. Exide does not have active hazardous waste surface impoundments, waste piles, land

treatment units or landfill units. Exide will submit certification reports for the hazardous waste units (Slag Stabilization Area, Containment Building, Truck/Trailer Storage Area, Whole Battery Storage Area, and K069/D008 Storage Area) within 60 days of completion of final closure.

Exide has closed the two hazardous waste piles and a certification report was submitted on July 8, 1988.

- B. Survey Plat.** No later than the submission of the certification of closure of each hazardous waste disposal unit, the owner or operator must submit to the local zoning authority, or the authority with jurisdiction over local land use, and to the Office of Environmental Services, Permits Division, a survey plat indicating the location and dimensions of landfills cells or other hazardous waste disposal units with respect to permanently surveyed benchmarks. This plat must be prepared and certified by a professional land surveyor. The plat filed with the local zoning authority, or the authority with jurisdiction over local land use, must contain a note, prominently displayed, which states the owner's or operator's obligation to restrict disturbance of the hazardous waste disposal unit in accordance with the applicable Chapter 35 regulations.

Response

Exide does not have any hazardous waste disposal units in addition to those already closed; therefore, this requirement does not apply.

Subchapter B. Post-Closure Requirements

§3519. Post-Closure Procedures

- A. Any proposed transfer of ownership of the property shall be reported to the administrative authority at least 60 days prior to execution of such sale.**

Response

Exide acknowledges this requirement and will comply.

- B. The administrative authority must approve any new owner. Criteria for approval includes agreement to land use restrictions necessary to protect public health and financial responsibility covering liability due to change in land use.**

Response

Exide acknowledges this requirement and will comply.

- C. The administrative authority will conduct an annual evaluation of the site for the period of post-closure.

Response

Exide acknowledges this requirement and will comply.

§3521. Post-Closure Care and Use of Property

A. Length of Post-Closure

1. Post-closure care for each hazardous waste management unit subject to the requirements of LAC 33:V.3519-3527 must continue for at least 30 years after the date of completing closure of that unit and must consist of at least the following:

Response

Exide intends to clean-close the permitted hazardous waste units; therefore post-closure care does not apply. Exide currently maintains a Post-Closure Permit for the two hazardous waste piles closed in 1985 and 1986. Post-closure care for the waste piles will continue for 30 years after issuance of the Post-Closure Permit in May 2001.

- a. monitoring and reporting in accordance with the requirements of LAC 33:V.Chapters 23, 25, 27, 29, 32 and 33; and

Response

Exide conducts a detection monitoring program for groundwater associated with the two closed hazardous waste piles. The program is conducted in accordance with LAC 33:V.Chapter 33. Exide's Groundwater Sampling and Analysis Plan detailing the program is included as Appendix 7.

- b. maintenance and monitoring of waste containment systems in accordance with the requirements of LAC 33:V.Chapters 23, 25, 27, 29, 32 and 33.

Response

Exide conducts scheduled inspections and regular maintenance of the cap systems at the waste piles. Maintenance includes mowing, fertilization and integrity inspections. Details are provided in the Closure and Post-Closure Plan in Appendix 8 and the Post-Closure Permit for the waste piles.

2. Any time preceding partial closure of a hazardous waste management unit subject to post-closure care requirements or final closure, or any time during the post-closure period for a particular unit, the administrative authority may, in accordance with the permit modification procedures in LAC 33:V.321:

- a. shorten the post-closure care period applicable to the hazardous waste management unit, or facility, if all disposal units have been closed, if he finds that the reduced period is sufficient to protect human health and the environment (e.g., leachate or groundwater monitoring results, characteristics of the hazardous wastes, application of advanced technology, or alternative disposal, treatment, or re-use techniques indicate that the hazardous waste management unit or facility is secure); or
- b. extend the post-closure care period applicable to the hazardous waste management unit or facility if he finds that the extended period is necessary to protect human health and the environment (e.g., leachate or groundwater monitoring results indicate a potential for migration of hazardous wastes at levels which may be harmful to human health and the environment).

Response

Exide acknowledges the requirements of this section and will comply.

3. The owner or operator may elect to demonstrate a shortened post-closure care period meets the requirements of Subparagraph A.2.a of this Section by using risk assessment methodology. The risk assessment must demonstrate that the shortened post-closure care period is protective of human health and the environment in accordance with LAC 33:I.Chapter 13.

Response

Exide acknowledges the requirements of this section and will comply.

B. The administrative authority may require, at partial and final closure, continuation of any of the security requirements of LAC 33:V.1507 during part or all of the post-closure period when:

1. hazardous wastes may remain exposed after completion of partial or final closure; or

Response

Exide does not expect that hazardous wastes will remain exposed after completion of closure as the hazardous waste piles have already been capped. Therefore, this citation does not apply.

2. access by the public or domestic livestock may pose a hazard to human health.

Response

Exide anticipates that the perimeter fencing will remain in-place at closure; therefore eliminating access by public or domestic livestock and the requirements of this section do not apply. The clay cap system will also minimize hazards to human health.

- C. Post-closure use of property on or in which hazardous wastes remain after partial or final closure must never be allowed to disturb the integrity of the final cover, liner(s), or any other components of the containment system, or the function of the facility's monitoring systems, unless the administrative authority finds that the disturbance:

1. is necessary to the proposed use of the property, and will not increase the potential hazard to human health or the environment; or
2. is necessary to reduce a threat to human health or the environment.

Response

Exide acknowledges the requirements of this section and will comply.

- D. All post-closure care activities must be in accordance with the provisions of the approved post-closure plan as specified in LAC 33:V.3525.

Response

Exide acknowledges the requirements of this citation and will comply.

§3523. Post-Closure Plan, Amendment of Plan

- A. Written Plan. The owner or operator of a hazardous waste disposal unit must have a written post-closure plan. In addition, certain surface impoundments and waste piles from which the owner or

operator intends to remove or decontaminate the hazardous wastes at partial or final closure are required by LAC 33:V.2911.D and 2315.C to have contingent post-closure plans. Owners or operators of surface impoundments and waste piles not otherwise required to prepare contingent post-closure plans under LAC 33:V.2315.C and 2911.D must submit a post-closure plan to the Office of Environmental Services, Permits Division within 90 days from the date that the owner or operator or administrative authority determines that the hazardous waste management unit must be closed as a landfill, subject to the requirements of LAC 33:V.3519-3527. The plan must be submitted with the permit application, in accordance with LAC 33:V.517.P, and approved by the administrative authority as part of the permit issuance procedures under these regulations. In accordance with LAC 33:V.311 the approved post-closure plan will become a condition of any hazardous waste permit issued.

Response

Exide will clean-close the hazardous waste storage and treatment units; therefore this section does not apply. Exide does maintain a post-closure care plan for the two closed hazardous waste impoundments in accordance with their Post-Closure Permit.

- B. For each hazardous waste management unit subject to the requirements of this Section, the post-closure plan must identify the activities that will be carried on after closure of each disposal unit and the frequency of these activities, and include at least:**
- 1. a description of the planned monitoring activities and frequencies at which they will be performed to comply with LAC 33:V.Chapters 23, 25, 27, 29, 32 and 33 during the post-closure care period; and**
 - 2. a description of the planned maintenance activities, and frequencies at which they will be performed, to ensure:**
 - a. the integrity of the cap and final cover or other containment systems in accordance with the requirements of LAC 33:V.Chapters 23, 25, 27, 29, 32 and 33; and**
 - b. the functioning of the monitoring equipment in accordance with the requirements of LAC 33:V.Chapters 23, 25, 27, 29, 32, and 33;**

3. the name, address, and phone number of the person or office to contact about the hazardous waste disposal unit or facility during the post-closure care period ; and
4. for facilities where the administrative authority has applied alternative requirements at a regulated unit under LAC 33:V.3301.G, 3501.D, and/or 3701.D, either the alternative requirements that apply to the regulated unit or a reference to the enforceable document containing those requirements.

Response

Exide will clean-close the hazardous waste storage and treatment units; therefore this section does not apply. Exide does maintain a post-closure care plan for the two closed hazardous waste impoundments in accordance with their Post-Closure Permit.

- C. Until final closure of the facility, a copy of the approved post-closure plan must be furnished to the administrative authority upon request, including request by mail. After final closure has been certified, the person or office specified in LAC 33:V.3525 must keep the approved post-closure plan during the remainder of the post-closure period.

Response

Exide acknowledges this requirement and will comply.

- D. Amendment of Plan. The owner or operator must submit to the Office of Environmental Services, Permits Division a written notification of or request for a permit modification to authorize a change in the approved post-closure plan in accordance with the applicable requirements of LAC 33:V.Chapters 3 and 7. The written notification or request must include a copy of the amended post-closure plan for review or approval by the administrative authority.

Response

Exide acknowledges this requirement and will comply.

1. The owner or operator may submit a written notification or request to the Office of Environmental Services, Permits Division for a permit modification to amend the post-closure plan at any time during the active life of the facility or during the post-closure care period.
2. The owner or operator must submit a written notification of or request for a permit modification to authorize a change in the approved post-closure plan whenever:

- a. changes in operating plans or facility design affect the approved post-closure plan; or
 - b. there is a change in the expected year of final closure, if applicable; or
 - c. events which occur during the active life of the facility, including partial and final closures, affect the approved post-closure plan; or
 - d. the owner or operator requests the administrative authority to apply alternative requirements to a regulated unit under LAC 33:V.3301.G, 3501.D, and/or 3701.D.
3. The owner or operator must submit a written request for a permit modification at least 60 days prior to the proposed change in facility design or operation, or no later than 60 days after an unexpected event has occurred which has affected the post-closure plan. An owner or operator of a surface impoundment or waste pile that intends to remove all hazardous waste at a closure and is not otherwise required to submit a contingent post-closure plan under LAC 33:V.2911.D and 2315.C must submit a post-closure plan to the Office of Environmental Services, Permits Division no later than 90 days after the date that the owner or operator or administrative authority determines that the hazardous waste management unit must be closed as a landfill, subject to the requirements of LAC 33:V.2521. The administrative authority will approve, disapprove or modify this plan in accordance with the procedures in LAC 33:V.Chapters 3 and 7. In accordance with LAC 33:V.311, the approved post-closure plan will become a permit condition.
4. The administrative authority may request modifications to the plan under the conditions described in LAC 33:V.3523.D.2. The owner or operator must submit the modified plan no later than 60 days after the administrative authority's request or no later than 90 days if the unit is a surface impoundment or waste pile not previously required to prepare a contingent post-closure plan. Any modifications requested by the administrative authority will be approved, disapproved, or modified in accordance with the procedures in LAC 33:V.Chapters 3 and 7.
- E. **Certification of Completion of Post-closure Care.** No later than 60 days after completion of the established post-closure care period for

each hazardous waste disposal unit, the owner or operator must submit to the Office of Environmental Services, Permits Division, by registered mail, a certification that the post-closure care period for the hazardous waste disposal unit was performed in accordance with the specifications in the approved post-closure plan. The certification must be signed by the owner or operator and an independent engineer. Documentation supporting the independent registered professional engineer's certification must be furnished to the administrative authority upon request until he releases the owner or operator from the financial assurance requirements for post-closure care under LAC 33:V.3711.I.

Response

Exide acknowledges this requirement and will comply.

§3525. Post-Closure Notices

- A. No later than 60 days after certification of closure of each hazardous waste disposal unit, the owner or operator must submit to the local zoning authority, or the authority with jurisdiction over local land use, and to the Office of Environmental Services, Permits Division a record of the type, location, and quantity of hazardous wastes disposed of within each cell or other disposal unit of the facility. For hazardous wastes disposed of before January 12, 1981, the owner or operator must identify the type, location, and quantity of the hazardous wastes to the best of his knowledge and in accordance with any records he has kept.

Response

Exide acknowledges this requirement and will comply.

- B. Within 60 days of certification of closure of the first hazardous waste disposal unit and within 60 days of certification of closure of the last hazardous waste disposal unit, the owner or operator must:

1. record, in accordance with state law, a notation on the deed to the facility property or on some other instrument which is normally examined during the title search—that will in perpetuity notify any potential purchaser of the property that:
 - a. the land has been used to manage hazardous wastes; and
 - b. its use is restricted under LAC 33:V.Chapter 35; and

- c. the survey plat and record of the type, location, and quantity of hazardous wastes disposed of within each cell or other hazardous waste disposal unit of the facility required by LAC 33:V.3517 and this Section have been filed with the local zoning authority or the authority with jurisdiction over local land use and with the administrative authority; and
2. submit a certification, signed by the owner or operator, that he has recorded the notation specified in Paragraph B.1 of this Section, including a copy of the document in which the notation has been placed, to the administrative authority.

Response

Exide acknowledges this requirement and will comply.

- C. If the owner or operator or any subsequent owner or operator of the land upon which a hazardous waste disposal unit is located wishes to remove hazardous wastes and hazardous waste residues, the liner, if any, or contaminated soils, he must request a modification to the post-closure permit in accordance with the applicable requirements in LAC 33:V.Chapters 3 and 7. The owner or operator must demonstrate that the removal of hazardous wastes will satisfy the criteria of LAC 33:V.3521. By removing hazardous waste, the owner or operator may become a generator of hazardous waste and must manage it in accordance with all applicable requirements of this Chapter. If he is granted a permit modification or otherwise granted approval to conduct such removal activities, the owner or operator may request that the administrative authority approve either:
 1. the removal of the notation on the deed to the facility property or other instrument normally examined during title search; or
 2. the addition of a notation to the deed or instrument indicating the removal of the hazardous waste.

Response

Exide acknowledges this requirement and will comply.

§3527. Certification of Completion of Post-Closure Care

- A. No later than 60 days after completion of the established post-closure care period for each hazardous waste disposal unit, the owner or operator must submit to the Office of Environmental Services, Permits Division, by registered mail, a certification that the

post-closure care period for the hazardous waste disposal unit was performed in accordance with the specifications in the approved post-closure plan. The certification must be signed by the owner or operator and an independent registered professional engineer. Documentation supporting the independent registered professional engineer's certification must be furnished to the administrative authority upon request until he releases the owner or operator from the financial assurance requirements for post-closure care under LAC 33:V.3711.I.

Response

Exide acknowledges this requirement and will comply.



CHAPTER 37

FINANCIAL REQUIREMENTS

Exide acknowledges the financial requirements for the containment building presented in this chapter. Please find enclosed as Appendix 9, the Surety Bond for financial assurance obligations.

Title 33
ENVIRONMENTAL QUALITY
Part V. Hazardous Waste and Hazardous Materials

Chapter 37. Financial Requirements

§3701. Applicability

- A. The requirements of this Chapter apply to owners and operators of all hazardous waste facilities, except as provided otherwise in this Part.**

Response

Exide acknowledges this citation and will comply.

- B. The requirements of LAC 33:V.3709 and 3711 apply only to owners and operators of:**

- 1. disposal facilities;**

Response

Exide has two closed hazardous waste piles; therefore this requirement applies to the waste piles.

- 2. piles and surface impoundments from which the owner or operator intends to remove the wastes at closure, to the extent that these sections are made applicable to such facilities in LAC 33:V.Chapters 23 and 29;**

Response

Exide does not have piles or surface impoundments from which the wastes will be removed at closure; therefore this requirement does not apply.

- 3. tank systems that are required under LAC 33:V.1915 to meet the requirements for landfills; and**

Response

Exide does not use tanks for storage of hazardous wastes; therefore this requirement does not apply.

- 4. containment buildings that are required under LAC 33:V.1803 to meet the requirements for landfills.**

Response

Exide anticipates clean closure of the Containment Building. However, if all contaminated subsoils cannot be practicably removed or decontaminated, then the Containment Building will be closed in accordance with the requirements for landfills as indicated in LAC 33:V.1803.

- C. States and the federal government are exempt from the requirements of this Chapter.**

[Comment: The permit application should include a description of the financial structure of the operating unit including capital structure, principal ownership, and insurance coverage for personal injury and property damage.]

Response

This section does not apply as Exide is not a state or federal government.

- D. The administrative authority may replace all or part of the requirements of this Chapter applying to a regulated unit with alternative requirements for financial assurance set out in the permit or in an enforceable document (as defined in LAC 33:V.305.H), where the administrative authority:**

- 1. prescribes alternative requirements for the regulated unit under LAC 33:V.3301.G and/or 3501.D; and**

Response

Exide acknowledges this citation and will comply.

- 2. determines that it is not necessary to apply the requirements of this Chapter because the alternative financial assurance requirements will protect human health and the environment.**

Response

Exide acknowledges this citation and will comply.

§3703. Definitions of Terms as Used In This Chapter]

A. General Terms

Response

Exide acknowledges the definitions in this chapter and will comply.

- 1. *Closure Plan*-the plan for closure prepared in accordance with the requirements of LAC 33:V.Chapter 35.**

2. ***Current Closure Cost Estimate***-the most recent of the estimates prepared in accordance with LAC 33:V.3705.A-C.
3. ***Current Post-Closure Cost Estimate***-the most recent of the estimates prepared in accordance with LAC 33:V.3709.A-C.
4. ***Parent Corporation***-a corporation which directly owns at least 50 percent of the voting stock of the corporation which is the facility owner or operator; the latter corporation is deemed a subsidiary of the parent corporation.
5. ***Post-Closure Plan***-the plan for the post-closure care prepared in accordance with the requirements of LAC 33:V.Chapter 35.
6. The following terms are used in the specifications for the financial tests for closure, post-closure care, and liability coverage. The definitions are intended to assist in the understanding of these regulations and are not intended to limit the meanings of terms in a way that conflicts with generally accepted accounting practices.
 - a. ***Assets***-all existing and all probable future economic benefits obtained or controlled by a particular entity.
 - b. ***Current Assets***-cash or other assets, or resources commonly identified as those which are reasonably expected to be realized in cash, or sold, or consumed during the normal operating cycle of the business.
 - c. ***Current Liabilities***-obligations whose liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities.
 - d. ***Independently Audited***-refers to an audit performed by an independent certified public accountant in accordance with generally accepted auditing standards.
 - e. ***Liabilities***-probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.
 - f. ***Net Working Capital***-current assets minus current liabilities.

- ## Response

1. ***Accidental Occurrence***-an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured.
2. ***Legal Defense Costs***-any expenses that an insurer incurs in defending against claims of third parties brought under the terms and conditions of an insurance policy.

3. ***Nonsudden Accidental Occurrence***-an occurrence which takes place over time and involves continuous or repeated exposure.
4. ***Sudden Accidental Occurrence***-an occurrence which is not continuous or repeated in nature.

Subchapter A. Closure Requirements

§3705. Cost Estimate for Closure

- A. The owner or operator must have a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in LAC 33:V.3503-3517 and applicable closure requirements in LAC 33:V.1803, 1915, 2117, 2315, 2521, 2719, 2911, 3121, and 3203-3207.
 1. The estimate must equal the cost of final closure at the point in the facility's active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan (see LAC 33:V.3511.B); and

Response

The closure cost estimate is presented in the Closure and Post-Closure Plan in Appendix 8. Closure costs are based on final closure when the facility is at maximum inventory. Costs for slag and wash water loading, transportation and disposal are included as the materials are waste with no value for recycling. Costs loading and transportation of batteries, battery components and K069/D008 drummed materials have been included. Costs for disposal of these materials has not been included as they have value and will be sent to another smelter for recycling. The value of these materials has been assumed as zero for the cost estimate.

2. The closure cost estimate must be based on the costs to the owner or operator of hiring a third party to close the facility. A third party is a party who is neither a parent nor a subsidiary of owner or operator in LAC 33:V.3703.A. The owner or operator may use costs for on-site disposal if he can demonstrate that on-site disposal capacity will exist at all times over the life of the facility.

Response

Closure costs presented in the Closure and Post Closure Plan (Appendix 8) are based on hiring a third party contractor or consultant to perform the activities. Personnel, equipment or resources from the

Baton Rouge smelter will not be used in any manner as part of closure procedures. Exide will not use on-site disposal during closure.

3. The closure cost estimate may not incorporate any salvage value that may be realized with the sale of hazardous wastes or non-hazardous wastes if applicable under LAC 33:V.3513.D, facility structures or equipment, land, or other assets associated with the facility at the time of partial or final closure.

Response

While batteries, battery components, and K069/D008 drummed materials may have value for recycling at another smelter, the cost estimate conservatively assumes no salvage value for these materials. These materials were assumed to have zero disposal cost, but costs were included for loading and transportation.

4. The owner or operator may not incorporate a zero cost for hazardous wastes or non-hazardous wastes if applicable under LAC 33:V.3513.D, that might have economic value.

Response

While batteries, battery components, and K069/D008 drummed materials may have value for recycling at another smelter, the cost estimate conservatively assumes no salvage value for these materials. These materials were assumed to have zero disposal cost, but costs were included for loading and transportation.

- B. During the active life of the facility, the owner or operator must adjust the closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with LAC 33:V.3707. For owners and operators using the financial test or corporate guarantee, the closure cost estimate must be updated for inflation within 30 days after the close of the firm's fiscal year and before submission of updated information to the administrative authority as specified in LAC 33:V.3707.F. The adjustment may be made by recalculating the maximum costs of closure in current dollars, or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the U.S. Department of Commerce in its Survey of Current Business, as specified in LAC 33:V.3705.B.1 and 2. The inflation factor is the result of dividing the latest published annual deflator by the deflator for the previous year.

1. The first adjustment is made by multiplying the closure cost estimate by the inflation factor. The result is the adjusted closure cost estimate.

Response

Exide acknowledges this requirement and will comply.

2. **Subsequent adjustments are made by multiplying the latest adjusted closure cost estimate by the latest inflation factor.**

Response

Exide acknowledges this requirement and will comply. The closure cost estimate provided in the Closure and Post Closure Plan in Appendix 8 has been adjusted to 2003 costs.

- C. **During the active life of the facility, the owner or operator must revise the closure cost estimate no later than 30 days after the administrative authority has approved the request to modify the closure plan, if the change in the closure plan increases the cost of closure. The revised closure cost estimate must be adjusted for inflation as specified in LAC 33:V.3705.B.**

Response

Exide acknowledges this requirement and will comply.

- D. **The owner or operator must keep, at the facility during the operating life of the facility, the latest closure cost estimate prepared as specified in LAC 33:V.3705.A and C and, when this estimate has been adjusted as specified in LAC 33:V.3705.B, the latest adjusted closure cost estimate. The cost estimate must be available to the administrative authority by mail request also.**

Response

Exide acknowledges this requirement and will comply. A copy of the latest closure cost estimate is maintained at the facility.

- §3707. Financial Assurance for Closure**
[NOTE: An owner or operator of each facility must establish financial assurance for closure of the facility. Under this Part, the owner or operator must choose from the options as specified in LAC 33:V.3707.A-F, which choice the administrative authority must find acceptable based on the application and the circumstances.]

A. Closure Trust Fund

1. **An owner or operator may satisfy the requirements of this Part by establishing a closure trust fund which conforms to the requirements of this Subpart, and submitting an originally signed duplicate of the trust agreement to the Office of Management and Finance, Financial Services Division. An owner or operator of a**

new facility must submit the originally signed duplicate of the trust agreement to the administrative authority at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

Response

Exide maintains financial assurances in the form of a Surety Bond guaranteeing closure; therefore; this section regarding closure trusts does not apply. Information regarding the surety bond is provided in Appendix 9.

- 2. The wording of the trust agreement must be identical to the wording specified in LAC 33:V.3719.A.1, and the trust agreement must be accompanied by a formal certification of acknowledgment (for example, see LAC 33:V.3719.A.2). Schedule A of the trust agreement must be updated within 60 days after a change in the amount of the current closure cost estimate covered by the agreement.**
- 3. Payments into the trust fund must be made annually by the owner or operator over the term of the initial permit, or over the remaining operating life of the facility as estimated in the closure plan, whichever period is shorter; this period is hereafter referred to as the "pay-in period." The payments into the closure trust fund must be made as follows:**
 - a. For a new facility, the first payment must be made before the initial receipt of hazardous waste for treatment, storage, or disposal. A receipt from the trustee for this payment must be submitted by the owner or operator to the administrative authority before this initial receipt of hazardous waste. The first payment must be at least equal to the current closure cost estimate, except as provided in LAC 33:V.3707.G divided by the number of years in the pay-in period. Subsequent payments must be made no later than 30 days after each anniversary date of the first payment. The amount of each subsequent payment must be determined by this formula:**

where:
CE = current closure cost estimate,
CV = current value of the trust fund, and
Y = number of years remaining in the pay-in period.

- b. If an owner or operator has previously established a trust fund as specified in LAC 33:V.4403.A and the value of that trust fund is less than the current closure cost estimate when a permit under these regulations is awarded for the facility, then the amount of the current closure cost estimate still to be paid into the trust fund must be paid in over the pay-in period as defined in LAC 33:V.3707.A.3. Payments must continue to be made no later than 30 days after each anniversary date of the first payment made. The amount of each payment must be determined by this formula:

where:

CE = current closure cost estimate,

CV = current value of the trust fund, and

Y = number of years remaining in the pay-in period.

4. The owner or operator may accelerate payments into the trust fund or he may deposit the full amount of the current closure cost estimate at the time the fund is established. However, he must maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in LAC 33:V.3707.A.3.
5. If the owner or operator establishes a closure trust fund after having used one or more alternate mechanisms specified in this Section or in LAC 33:V.4403, his first payment must be in at least the amount that the fund would contain if the trust fund were established initially and annual payments made according to specifications of this Section and LAC 33:V.4403.A, as applicable.
6. After the pay-in period is completed, whenever the current closure cost estimate changes, the owner or operator must compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator, within 60 days after the change in the cost estimate, must either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current closure cost estimate, or obtain other financial assurance as specified in this Section to cover the difference.
7. If the value of the trust fund is greater than the total amount of the current closure cost estimate, the owner or operator may

submit a written request to the Office of Management and Finance, Financial Services Division for release of the amount in excess of the current closure cost estimate.

- 8. If an owner or operator substitutes other financial assurance as specified in this Part for all or part of the trust fund, he may submit a written request to the Office of Management and Finance, Financial Services Division for release of the amount in excess of the current closure cost estimate covered by the trust fund.**
- 9. Within 60 days after receiving a request from the owner or operator for release of funds as specified in LAC 33:V.3707.A.7 and A.8, the administrative authority will instruct the trustee to release to the owner or operator such funds as the administrative authority specifies in writing.**
- 10. After beginning partial or final closure, an owner or operator, or any other person authorized to conduct partial or final closure may request reimbursements for partial or final closure expenditures by submitting itemized bills to the administrative authority. The owner or operator may request reimbursement for partial closure only if sufficient funds are remaining in the trust fund to cover the maximum costs of closing the facility over its operating life. Within 60 days after receiving bills for partial or final closure activities, the administrative authority will instruct the trustee to make reimbursements in those amounts as the administrative authority specifies in writing, if the administrative authority determines that the partial or final closure expenditures are in accordance with the approved closure plan, or otherwise justified. If the administrative authority has reason to believe that the maximum cost of closure over the remaining life of the facility will be significantly greater than the value of the trust fund, he may withhold reimbursements of such amounts as he deems prudent until he determines, in accordance with this Section, that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the administrative authority does not instruct the trustee to make such reimbursements, he will provide the owner or operator with a detailed written statement of reasons.**
- 11. The administrative authority will agree to termination of the trust when:**
 - a. an owner or operator substitutes alternate financial assurance as specified in this Part; or**

- b. the administrative authority releases the owner or operator from the requirements of this Part in accordance with LAC 33:V.3707.I.**

B. Surety Bond Guaranteeing Payment Into a Closure Trust Fund

- 1. An owner or operator may satisfy the requirements of this Part by obtaining a surety bond which conforms to the requirements of this Paragraph and submitting the bond to the Office of Management and Finance, Financial Services Division. An owner or operator of a new facility must submit the bond to the administrative authority at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The bond must be effective before this initial receipt of hazardous waste. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury, and approved by the administrative authority.**

Response

Exide maintains financial assurances in the form of a Surety Bond guaranteeing performance of closure; therefore this section regarding surety bonds guaranteeing payment into a closure trust fund does not apply. Information regarding the surety bond is provided in Appendix 9.

- 2. The wording of the surety bond must be identical to the wording specified in LAC 33:V.3719.B.**
- 3. The owner or operator who uses a surety bond to satisfy the requirements of this Part must also establish a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the administrative authority. This standby trust fund must meet the requirements specified in LAC 33:V.3707.A except that:**
 - a. an originally signed duplicate of the trust agreement must be submitted to the administrative authority with the surety bond; and**
 - b. until the standby trust fund is funded pursuant to the requirements of this Part, the following are not required by these regulations:**

- i. **payments into the trust fund as specified in LAC 33:V.3707.A;**
 - ii. **updating of Schedule A of the trust agreement to show current closure cost estimates;**
 - iii. **annual valuations as required by the trust agreement; and**
 - iv. **notices of nonpayment as required by the trust agreement.**
4. **The bond must guarantee that the owner or operator will:**
 - a. **fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of final closure of the facility; or**
 - b. **fund the standby trust fund in an amount equal to the penal sum within 15 days after an order to begin final closure is issued by the administrative authority, or court of competent jurisdiction; or**
 - c. **provide alternate financial assurance as specified in this Part and obtain the administrative authority's written approval of the assurance provided, within 90 days after receipt by both the owner or operator and the administrative authority of a notice of cancellation of the bond from the surety.**
5. **Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.**
6. **The penal sum of the bond must be in an amount at least equal to the current closure cost estimate, except as provided in LAC 33:V.3707.G.**
7. **Whenever the current closure cost estimate increases to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the Office of Management and Finance, Financial Services Division, or obtain other financial assurance as specified in this Part to cover the increase. Whenever the current closure cost estimate decreases,**

the penal sum may be reduced to the amount of the current closure cost estimate following written approval by the administrative authority.

8. Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator, and to the administrative authority. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the administrative authority, as evidenced by the return receipts.
9. The owner or operator may cancel the bond if the administrative authority has given prior written consent based on his receipt of evidence of alternate financial assurance as specified in this Part.

C. Surety Bond Guaranteeing Performance of Closure

1. An owner or operator may satisfy the requirements of this Section by obtaining a surety bond which conforms to the requirements of this Subsection and submitting the bond to the Office of Management and Finance, Financial Services Division. An owner or operator of a new facility must submit the bond to the administrative authority at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The bond must be effective before this initial receipt of hazardous waste. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury, and approved by the administrative authority.

Response

Exide maintains financial assurances in the form of a Surety Bond guaranteeing performance of closure. Information on the surety bond is provided in Appendix 9.

2. The wording of the surety bond must be identical to the wording specified in LAC 33:V.3719.C.

Response

Exide acknowledges this requirement and will comply.

3. The owner or operator who uses a surety bond to satisfy the requirements of this Section must also establish a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the

standby trust fund in accordance with instructions from the administrative authority. This standby trust must meet the requirements specified in Subsection A of this Section except that:

- a. an originally signed duplicate of the trust agreement must be submitted to the administrative authority with the surety bond; and

Response

Exide acknowledges this requirement and will comply.

- b. unless the standby trust fund is funded pursuant to the requirements of this Section, the following are not required by these regulations:
 - i. payments into the trust fund as specified in LAC 33:V.3707.A;
 - ii. updating of Schedule A of the trust agreement (for example, see LAC 33:V.Chapter 37) to show current closure cost estimates;
 - iii. annual valuations as required by the trust agreement; and
 - iv. notices of nonpayment as required by the trust agreement.

Response

Exide acknowledges this requirement and will comply.

4. The bond must guarantee that the owner or operator will:

- a. perform final closure in accordance with the closure plan and other requirements of the permit for the facility whenever required to do so; or

Response

Exide acknowledges this requirement and will comply.

- b. provide alternate financial assurance as specified in this Part, and obtain the administrative authority's written approval of the assurance provided, within 90 days after receipt of both the owner or operator, and the

administrative authority of a notice of cancellation of the bond from the surety.

Response

Exide acknowledges this requirement and will comply.

- 5 Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. Following a final administrative determination by the administrative authority pursuant to R.S. 30:2025 that the owner or operator has failed to perform final closure in accordance with the approved closure plan and other permit requirements when required to do so, under the terms of the bond the surety will perform final closure as guaranteed by the bond or will deposit the amount of the penal sum into the standby trust fund.**

Response

Exide acknowledges this requirement and will comply.

- 6. The penal sum of the bond must be in an amount at least equal to the current closure cost estimate.**

Response

Exide acknowledges this requirement and will comply.

- 7. Whenever the current closure cost estimate increases to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the Office of Management and Finance, Financial Services Division, or obtain other financial assurance as specified in this Part. Whenever the current closure cost estimate decreases, the penal sum may be reduced to the amount of the current closure cost estimate following written approval by the administrative authority.**

Response

Exide acknowledges this requirement and will comply.

- 8. Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the administrative authority. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or**

operator and the administrative authority, as evidenced by the return receipts.

Response

Exide acknowledges this requirement and will comply.

9. The owner or operator may cancel the bond if the administrative authority has given prior written consent. The administrative authority will provide such written consent when:

- a. an owner or operator substitutes alternate financial assurance as specified in this Part; or

Response

Exide acknowledges this requirement and will comply.

- b. the administrative authority releases the owner or operator from the requirements of this Part in accordance with LAC 33:V.3707.I.

Response

Exide acknowledges this requirement and will comply.

10. The surety will not be liable for deficiencies in the performance of closure by the owner or operator after the administrative authority releases the owner or operator from the requirements of this Part in accordance with LAC 33:V.3707.I.

D. Closure Letter of Credit

1. An owner or operator may satisfy the requirements of this Section by obtaining an irrevocable standby letter of credit which conforms to the requirements of this Subsection and submitting the letter to the Office of Management and Finance, Financial Services Division. An owner or operator of a new facility must submit the letter of credit to the administrative authority at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The letter of credit must be effective before the initial receipt of hazardous waste. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.

Response

Exide maintains financial assurances in the form of a Surety Bond guaranteeing closure; therefore this section regarding letter of credit

does not apply. Information regarding the surety bond is provided in Appendix 9.

2. The wording of the letter of credit must be identical to the wording specified in LAC 33:V.3719.D.
3. An owner or operator who uses a letter of credit to satisfy the requirements of this Section must also establish a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the administrative authority will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the administrative authority. This standby trust fund must meet the requirements of the trust fund specified in LAC 33:V.3707.A, except that:
 - a. an originally signed duplicate of the trust agreement must be submitted to the administrative authority with the letter of credit; and
 - b. unless the standby trust fund is funded pursuant to the requirements of this Section, the following are not required by these regulations:
 - i. payments into the trust fund as specified in LAC 33:V.3707.A;
 - ii. updating of Schedule A of the trust agreement (see LAC 33:V.3719.A) to show current closure cost estimates;
 - iii. annual valuations as required by the trust agreement; and
 - iv. notices of nonpayment as required by the trust agreement.
4. The letter of credit must be accompanied by a letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the following information: the EPA identification number, name, address, and the amount of funds assured for closure of the facility by the letter of credit.
5. The letter of credit must be irrevocable and issued for a period of at least one year. The letter of credit must provide that the expiration date will be automatically extended for a period of at

least one year unless, at least 120 days before the current expiration date, the issuing institution notifies both the owner or operator and the administrative authority by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days will begin on the date when both the owner or operator and the administrative authority have received the notice, as evidenced by the return receipts.

6. The letter of credit must be issued in an amount at least equal to the current closure cost estimate, except as provided in Subsection G of this Section.
7. Whenever the current closure cost estimate increases to an amount greater than the amount of the credit, the owner or operator, within 60 days after the increase, must either cause the amount of the credit to be increased so that it at least equals the current closure cost estimate and submit evidence of such increase to the Office of Management and Finance, Financial Services Division, or obtain other financial assurance as specified in this Part to cover the increase. Whenever the current closure cost estimate decreases, the amount of the credit may be reduced to the amount of the current closure cost estimate following written approval by the administrative authority.
8. Following a final administrative determination by the administrative authority pursuant to R.S. 30:2025 that the owner or operator has failed to perform final closure in accordance with the closure plan and other permit requirements when required to do so, the administrative authority may draw on the letter of credit.
9. If the owner or operator does not establish alternate financial assurance as specified in this Part, and obtain written approval of such alternate assurance from the administrative authority within 90 days after receipt by both the owner or operator and the administrative authority of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the administrative authority will draw on the letter of credit. The administrative authority may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last 30 days of any such extension the administrative authority will draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in this Part and obtain written approval of such assurance from the administrative authority.

10. The administrative authority will return the letter of credit to the issuing institution for termination when:
 - a. an owner or operator substitutes alternate financial assurance as specified in this Part; or
 - b. the administrative authority releases the owner or operator from the requirements of this Part in accordance with LAC 33:V.3707.I.

E. Closure Insurance

1. An owner or operator may satisfy the requirements of this Part by obtaining closure insurance which conforms to the requirements of this Paragraph and submitting a certificate of such insurance to the Office of Management and Finance, Financial Services Division. An owner or operator of a new facility must submit the certificate of insurance to the administrative authority at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The insurance must be effective before this initial receipt of hazardous waste. At a minimum, the insurer must be licensed to transact the business of insurance, or be eligible to provide insurance as an excess or surplus lines insurer, in one or more states, and authorized to transact business in Louisiana.

Response

Exide maintains financial assurances in the form of a Surety Bond guaranteeing closure; therefore this section regarding closure insurance does not apply.

2. The wording of the certificate of insurance must be identical to the wording specified in LAC 33:V.3719.E.
3. The closure insurance policy must be issued for a face amount at least equal to the current closure cost estimate, except as provided in LAC 33:V.3707.G. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.
4. The closure insurance policy must guarantee that funds will be available to close the facility whenever final closure occurs. The policy must also guarantee that once final closure begins, the insurer will be responsible for paying out funds, up to an amount

equal to the face amount of the policy, upon the direction of the administrative authority to such party or parties as the administrative authority specifies.

5. After beginning partial or final closure, an owner or operator, or any other person authorized to perform closure may request reimbursement for closure expenditures by submitting itemized bills to the administrative authority. The owner or operator may request reimbursements for partial closure only if the remaining value of the policy is sufficient to cover the maximum costs of closing the facility over its remaining operating life. Within 60 days after receiving bills for closure activities, the administrative authority will instruct the insurer to make reimbursements in such amounts as the administrative authority specifies in writing, if the administrative authority determines that the partial or final closure expenditures are in accordance with the approved closure plan or otherwise justified. If the administrative authority has reason to believe that the maximum cost of closure over the remaining life of the facility will be significantly greater than the face amount of the policy, he may withhold reimbursements of such amounts as he deems prudent until he determines, in accordance with LAC 33:V.3707.I, that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the administrative authority does not instruct the insurer to make such reimbursements, he will provide the owner or operator with a detailed written statement of reasons.
6. The owner or operator must maintain the policy in full force and effect until the administrative authority consents to termination of the policy by the owner or operator as specified in LAC 33:V.3707.E.10. Failure to pay the premium, without substitution of alternate financial assurance as specified in this Part, will constitute a significant violation of these regulations, warranting such remedy as the administrative authority deems necessary. Such violation will be deemed to begin upon receipt by the administrative authority of a notice of future cancellation, termination, or failure to renew, due to nonpayment of the premium, rather than upon the date of expiration.
7. Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided such consent is not unreasonably refused.

- 8. The policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the owner or operator and the administrative authority. Cancellation, termination, or failure to renew may not occur, however, during the 120 days beginning with the date of receipt of the notice by both the administrative authority and the owner or operator, as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur and the policy will remain in full force and effect in the event that on or before the date of expiration:**
- a. the administrative authority deems the facility abandoned; or**
 - b. the permit is terminated or revoked, or a new permit is denied; or**
 - c. closure is ordered by the administrative authority or a U.S. District Court or other court of competent jurisdiction; or**
 - d. the owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or**
 - e. the premium due is paid.**
- 9. Whenever the current closure cost estimate increases to an amount greater than the face amount of the policy, the owner or operator, within 60 days after the increase, must either cause the face amount to be increased to an amount at least equal to the current closure cost estimate, and submit evidence of such increase to the Office of Management and Finance, Financial Services Division, or obtain other financial assurance as specified in this Part to cover the increase. Whenever the current closure cost estimate decreases, the face amount may be reduced to the amount of the current closure cost estimate following written approval by the administrative authority.**
- 10. The administrative authority will give written consent to the owner or operator that he may terminate the insurance policy when:**

- a. an owner or operator substitutes alternate financial assurance as specified in this Part; or
 - i. the administrative authority releases the owner or operator from the requirements of this Part in accordance with LAC 33:V.3707.I.

F. Financial Test and Corporate Guarantee for Closure

- 1. An owner or operator may satisfy the requirements of this Section by demonstrating that he passes a financial test as specified in this Section. To pass this test the owner or operator must meet the criteria of either of the following.

Response

Exide maintains financial assurances in the form of a Surety Bond guaranteeing closure; therefore this section does not apply. Information on the Surety Bond is presented in Appendix 9.

- a. The owner or operator must have:
 - i. two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and
 - ii. net working capital and tangible net worth each at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates; and
 - iii. tangible net worth of at least \$10 million; and
 - iv. assets located in the United States amounting to at least 90 percent of his total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.
- b. The owner or operator must have:
 - i. a current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by

Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; and

- ii. **tangible net worth at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates; and**
 - iii. **tangible net worth of at least \$10 million; and**
 - iv. **assets located in the United States amounting to at least 90 percent of his total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.**
- 2. **The phrase "current closure and post-closure cost estimates" as used in Paragraph F.1 of this Section refers to the cost estimates required to be shown in Paragraphs 1-4 of the letter from the owner's or operator's chief financial officer (see LAC 33:V.3719.F). The phrase "current plugging and abandonment cost estimates" used in Paragraph F.1 of this Section refers to the cost estimates required to be shown in Paragraphs 1-4 of the letter from the owner's or operator's chief financial officer (40 CFR 144.70.f)**
- 3. **To demonstrate that he meets this test, the owner or operator must submit the following items to the Office of Management and Finance, Financial Services Division:**
 - a. **a letter signed by the owner's or operator's chief financial officer and worded as specified in LAC 33:V.3719.F; and**
 - b. **a copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and**
 - c. **a special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:**
 - i. **he has compared the data with the letter from the chief financial officer specified as having been derived from the independently audited, year-end**

financial statements for the latest fiscal year with the amounts in such financial statements; and

- ii. in connection with that procedure, no matters came to his attention which caused him to believe that the specified data should be adjusted.**
- 4. An owner or operator of a new facility must submit the items specified in LAC 33:V.3707.F.3 to the Office of Management and Finance, Financial Services Division at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal.**
- 5. After the initial submission of items specified in LAC 33:V.3707.F.3, the owner or operator must send updated information to the Office of Management and Finance, Financial Services Division within 90 days after the close of each succeeding fiscal year. This information must consist of all three items specified in LAC 33:V.3707.F.3.**
- 6. If the owner or operator no longer meets the requirements of LAC 33:V.3707.F.1, he must send notice to the Office of Management and Finance, Financial Services Division of intent to establish alternate financial assurance as specified in this Part. The notice must be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements. The owner or operator must provide the alternate financial assurance within 120 days after the end of such fiscal year.**
- 7. The administrative authority may, based on a reasonable belief that the owner or operator may no longer meet the requirements of LAC 33:V.3707.F.1, require reports of financial condition at any time from the owner or operator in addition to those specified in LAC 33:V.3707.F.3. If the administrative authority finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of LAC 33:V.3707.F.1, the owner or operator must provide alternate financial assurance as specified in this Part within 30 days after notification of such a finding.**
- 8. The administrative authority may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner's or operator's financial statements (see LAC 33:V.3707.F.3). An adverse opinion or a disclaimer of**

opinion will be cause for disallowance. The administrative authority will evaluate other qualifications on an individual basis. Based on the application, the circumstances and the accessibility of the applicant's assets, the administrative authority may disallow the use of this test. The owner or operator must provide alternate financial assurance as specified in this Part within 30 days after notification of the disallowance.

9. The owner or operator is no longer required to submit the items specified in LAC 33:V.3707.F.3 when:
 - a. an owner or operator substitutes alternate financial assurance as specified in this Part; or
 - b. the administrative authority releases the owner or operator from the requirements of this Part in accordance with LAC 33:V.3707.I.
10. An owner or operator may meet the requirements of this Section by obtaining a written guarantee. The guarantor must be the direct or higher tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements of LAC 33:V.3707.F.1-8 for owners or operators, and must comply with the terms of the guarantee. The wording of the guarantee must be identical to the wording specified in LAC 33:V.3719.H. A certified copy of the guarantee must accompany the items sent to the administrative authority as specified in LAC 33:V.3707.F.3. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee. The terms of the corporate guarantee must provide that:
 - a. If the owner or operator fails to perform final closure of a facility covered by the guarantee in accordance with the closure plan and other permit requirements whenever required to do so, the guarantor will do so or establish a trust fund as specified in LAC 33:V.3707.A in the name of the owner or operator.

would be available if a separate mechanism had been established and maintained for each facility. In directing the funds available through the mechanism for closure of any of the facilities covered by the mechanism, the administrative authority may direct only the amount of funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism.

Response

Exide acknowledges the requirements of this section; however the surety bond is maintained for the Baton Rouge Smelter only and this section does not apply.

- I. **Release of the Owner or Operator from the Requirements of this Section.** Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that final closure has been completed in accordance with the approved closure plan, and for facilities subject to LAC 33:V.3525, after receiving the certification required under LAC 33:V.3525.B.2, the administrative authority will notify the owner or operator in writing that he is no longer required by this Section to maintain financial assurance for final closure of the particular facility, unless the administrative authority has reason to believe that final closure has not been in accordance with the approved closure plan or that the owner or operator has failed to comply with the applicable requirements of LAC 33:V.3525. The administrative authority shall provide the owner or operator a detailed written statement of any such reason to believe that closure has not been in accordance with the approved closure plan or that the owner or operator has failed to comply with the applicable requirements of LAC 33:V.3525.

Response

Exide acknowledges the requirements of this section and will comply.

Subchapter B. Post-Closure Requirements

§3709. Cost Estimate for Post-Closure Care

- A. The owner or operator of a disposal surface impoundment, disposal miscellaneous unit, land treatment unit, or landfill unit, or of a surface impoundment or waste pile required under LAC 33:V.2315 and 2911 to prepare a contingent closure and post-closure plan, must have a detailed written estimate, in current dollars, of the annual cost of post-closure monitoring and maintenance of the facility in accordance with the applicable post-closure regulations in LAC 33:V.3519, 3527, 2315, 2521, 2719, 2911, and 3207.

1. The post-closure cost estimate must be based on the costs to the owner or operator of hiring a third party to conduct post-closure care activities. A third party is a party who is neither a parent nor a subsidiary of the owner or operator. (See definition of parent corporation in LAC 33:V.3703.)

Response

Exide maintains a post-closure permit and post-closure cost estimate for the two closed hazardous waste piles. The cost estimate is included in the Closure and Post Closure Plan in Appendix 8 and was based on hiring third party contractors or consultants to perform the activities.

2. The post-closure cost estimate is calculated by multiplying the annual post-closure cost estimate by the number of years of post-closure care required under LAC 33:V.3523.

Response

Exide acknowledges this requirement and will comply.

- B.** During the active life of the facility, the owner or operator must adjust the post-closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with LAC 33:V.3711. For owners or operators using the financial test or corporate guarantee, the post-closure cost estimate must be updated for inflation within 30 days after the close of the firm's fiscal year and before the submission of updated information to the administrative authority as specified in LAC 33:V.3711.F.5. The adjustment may be made by recalculating the post-closure cost estimate in current dollars or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the U.S. Department of Commerce in its *Survey of Current Business* as specified in LAC 33:V.3709.B.1 and B.2. The inflation factor is the result of dividing the latest published annual deflator by the deflator for the previous year.

1. The first adjustment is made by multiplying the post-closure cost estimate by the inflation factor. The result is the adjusted post-closure cost estimate.

Response

Exide acknowledges this requirement and will comply.

2. Subsequent adjustments are made by multiplying the latest adjusted post-closure cost estimate by the latest inflation factor.

Response

Exide acknowledges this requirement and will comply. The post-closure cost estimate provided in the Closure and Post Closure Plan in Appendix 8 has been adjusted to 2003 costs.

- C. During the active life of the facility, the owner or operator must revise the post-closure cost estimate within 30 days after the administrative authority has approved the request to modify the post-closure plan, if the change in the post-closure plan increases the cost of post-closure care. The revised post-closure cost estimate must be adjusted for inflation as specified in LAC 33:V.3709.B.

Response

Exide acknowledges this requirement and will comply.

- D. The owner or operator must keep the following at the facility during the operating life of the facility: the latest post-closure cost estimate prepared in accordance with LAC 33:V.3709.A and C and, when this estimate has been adjusted, the latest adjusted post-closure cost estimate.

Response

Exide acknowledges this requirement and will comply. Exide maintains a copy of the latest post-closure cost estimate at the facility.

§3711. Financial Assurance for Post-Closure Care

The owner or operator of a hazardous waste management unit subject to the requirements of LAC 33:V.3709 must establish financial assurance for post-closure care in accordance with the approved post-closure plan for the facility 60 days prior to the initial receipt of hazardous waste or the effective date of the regulation, whichever is later. Under this Section, the owner or operator must choose from the options as specified in Subsections A-F of this Section, which choice the administrative authority must find acceptable based on the application and the circumstances.

A. Post-Closure Trust Fund

1. An owner or operator may satisfy the requirements of this Part by establishing a post-closure trust fund which conforms to the requirements of this Paragraph and submitting an originally signed duplicate of the trust agreement to the Office of Management and Finance, Financial Services Division. An owner or operator of a new facility must submit the originally signed

duplicate of the trust agreement to the administrative authority at least 60 days before the date on which hazardous waste is first received for disposal. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

Response

Exide maintains financial assurances in the form of a Surety Bond guaranteeing post-closure; therefore this section regarding post-closure trusts does not apply. Information regarding the surety bond is provided in Appendix 9.

2. The wording of the trust agreement must be identical to the wording specified in LAC 33:V.3719.A.1, and the trust agreement must be accompanied by a formal certification of acknowledgment (for example, see LAC 33:V.3719.A.2). Schedule A of the trust agreement must be updated within 60 days after a change in the amount of the current post-closure cost estimate covered by the agreement.
3. Payments into the trust fund must be made annually by the owner or operator over the term of the initial permit, or over the remaining operating life of the facility as estimated in the closure plan, whichever period is shorter; this period is hereafter referred to as the "pay-in period." The payments into the post-closure trust fund must be made as follows.
 - a. For a new facility, the first payment must be made before the initial receipt of hazardous waste for disposal. A receipt from the trustee for this payment must be submitted by the owner or operator to the administrative authority before this initial receipt of hazardous waste. The first payment must be at least equal to the current post-closure cost estimate, except as provided in LAC 33:V.3711.G, divided by the number of years in the pay-in period. Subsequent payments must be made no later than 30 days after each anniversary date of the first payment. The amount of each subsequent payment must be determined by this formula:
$$\text{Next Payment} = \frac{\text{CE} - \text{CV}}{\text{Y}}$$

where:
CE = current post-closure cost estimate,
CV = current value of the trust fund, and
Y = number of years remaining in the pay-in period.

- b. If an owner or operator has previously established a trust fund as specified in LAC 33:V.4407.A, and the value of that trust fund is less than the current post-closure cost estimate when a permit under these regulations is awarded for the facility, the amount of the current post-closure cost estimate still to be paid into the fund must be paid in over the pay-in period as defined in LAC 33:V.3711.A.3. Payments must continue to be made no later than 30 days after each anniversary date of the first payment made. The amount of each payment must be determined by this formula:

$$\text{Next Payment} = \frac{\text{CE}-\text{CV}}{\text{Y}}$$

where:

CE= current post-closure cost estimate,

CV = current value of the trust fund, and

Y = the number of years remaining in the pay-in period.

4. The owner or operator may accelerate payments into the trust fund or he may deposit the full amount of the current post-closure cost estimate at the time the fund is established. However, he must maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in LAC 33:V.3711.A.3.
5. If the owner or operator establishes a post-closure trust fund after having used one or more alternate mechanisms specified in this Section or in LAC 33:V.4407, his first payment must be in at least the amount that the fund would contain if the trust fund were established initially and if annual payments were made according to specifications of this Subsection and LAC 33:V.4407, as applicable.
6. After the pay-in period is completed, whenever the current post-closure cost estimate changes during the operating life of the facility, the owner or operator must compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator, within 60 days after the change in the cost estimate, must either deposit an amount into the fund so that the fund at least equals the amount of the current post-closure cost estimate, or obtain other financial assurance as specified in this Part to cover the difference.

7. During the operating life of the facility, if the value of the trust fund is greater than the total amount of the current post-closure cost estimate, the owner or operator may submit a written request to the Office of Management and Finance, Financial Services Division for release of the amount in excess of the current post-closure cost estimate.
8. If an owner or operator substitutes other financial assurance as specified in this Part for all or part of the trust fund, he may submit a written request to the Office of Management and Finance, Financial Services Division for release of the amount in excess of the current post-closure cost estimate covered by the trust fund.
9. Within 60 days after receiving a request from the owner or operator for release of funds as specified in LAC 33:V.3711.A.7 or 8, the administrative authority will instruct the trustee to release to the owner or operator such funds as the administrative authority specifies in writing.
10. During the period of post-closure care, the administrative authority may approve a release of funds if the owner or operator demonstrates to the administrative authority that the value of the trust fund exceeds the remaining cost of post-closure care.
11. An owner or operator, or any other person authorized to perform post-closure care, may request reimbursement for the post-closure expenditures by submitting itemized bills to the administrative authority. Within 60 days after receiving bills for post-closure activities, the administrative authority will instruct the trustee to make reimbursements in those amounts as the administrative authority specifies in writing, if the administrative authority determines that the post-closure care expenditures are in accordance with the approved post-closure plan or otherwise justified. If the administrative authority does not instruct the trustee to make such reimbursements, he will provide the owner or operator with a detailed written statement of reasons.
12. The administrative authority will agree to termination of the trust when:
 - a. an owner or operator substitutes alternate financial assurance as specified in this Part; or

- b. the administrative authority releases the owner or operator from the requirements of this Section in accordance with Subsection I of this Section.**

B. Surety Bond Guaranteeing Payment into a Post-closure Trust Fund

- 1. An owner or operator may satisfy the requirements of this Section by obtaining a surety bond which conforms to the requirements of this Subsection and submitting the bond to the Office of Management and Finance, Financial Services Division. An owner or operator of a new facility must submit the bond to the administrative authority at least 60 days before the date on which hazardous waste is first received for disposal. The bond must be effective before this initial receipt of hazardous waste. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury, and approved by the administrative authority.**

Response

Exide maintains financial assurances in the form of a Surety Bond guaranteeing post-closure; therefore this section regarding surety bond guaranteeing payment into a post-closure trust does not apply. Information regarding the surety bond is provided in Appendix 9.

- 2. The wording of the surety bond must be identical to the wording specified in LAC 33:V.3719.B.**
- 3. The owner or operator who uses a surety bond to satisfy the requirements of this Part must also establish a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the administrative authority. This standby trust fund must meet the requirements specified in LAC 33:V.3711.A except that:**
 - a. an originally signed duplicate of the trust agreement must be submitted to the administrative authority with the surety bond; and**
 - b. until the standby trust fund is funded pursuant to the requirements of this Part, the following are not required by these regulations:**
 - i. payments into the trust fund as specified in LAC 33:V.3711.A.3;**

- ii. updating of Schedule A of the trust agreement to show current post-closure cost estimates;
 - iii. annual valuations as required by the trust agreement; and
 - iv. notices of nonpayment as required by the trust agreement.
- 4. The bond must guarantee that the owner or operator will:
 - a. fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of final closure of the facility; or
 - b. fund the standby trust fund in an amount equal to the penal sum within 15 days after an order to begin final closure issued by the administrative authority becomes final, or within 15 days after an order to begin final closure is issued by a U.S. district court or other court of competent jurisdiction; or
 - c. provide alternate financial assurance as specified in this Part, and obtain the administrative authority's written approval of the assurance provided within 90 days after receipt by both the owner or operator and the administrative authority of a notice of cancellation of the bond from the surety.
- 5. Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.
- 6. The penal sum of the bond must be in an amount at least equal to the current post-closure cost estimate, except as provided in LAC 33:V.3711.G.
- 7. Whenever the current post-closure cost estimate increases to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current post-closure cost estimate and submit evidence of such increase to the Office of Management and Finance, Financial Services Division, or obtain other financial assurance as specified in this Part to cover the increase. Whenever the current post-closure cost estimate decreases, the penal sum may be reduced to the amount of the

current post-closure cost estimate following written approval by the administrative authority.

8. Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator, and to the Office of Management and Finance, Financial Services Division. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the administrative authority, as evidenced by the return receipts.
9. The owner or operator may cancel the bond if the administrative authority has given prior written consent based on his receipt of evidence of alternate financial assurance as specified in this Part.

C. Surety Bond Guaranteeing Performance of Post-Closure Care

1. An owner or operator of a facility which has been issued a standard permit may satisfy the requirements of this Section by obtaining a surety bond which conforms to the requirements of this Subsection and by submitting the bond to the Office of Management and Finance, Financial Services Division. An owner or operator of a new facility must submit the bond to the administrative authority at least 60 days before the date on which hazardous waste is first received for disposal. The bond must be effective before this initial receipt of hazardous waste. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury, and approved by the administrative authority.

Response

Exide maintains financial assurances in the form of a Surety Bond guaranteeing post-closure. Information regarding the surety bond is provided in Appendix 9.

2. The wording of the surety bond must be identical to the wording specified in LAC 33:V.3719.C.

Response

Exide acknowledges this requirement and will comply.

3. The owner or operator who uses a surety bond to satisfy the requirements of this Part must also establish a standby trust fund. Under the terms of the bond, all payments made

thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the administrative authority. This standby trust fund must meet the requirements specified in LAC 33:V.3711.A except that:

- a. an originally signed duplicate of the trust agreement must be submitted to the administrative authority with the surety bond; and

Response

Exide acknowledges this requirement and will comply.

- b. unless the standby trust fund is funded pursuant to the requirements of this Part, the following are not required by these regulations:

- i. payments into the trust fund as specified in LAC 33:V.3711.A.3;

Response

Exide acknowledges this requirement and will comply.

- ii. updating of Schedule A of the trust agreement to show current post-closure cost estimates;

Response

Exide acknowledges this requirement and will comply.

- iii. annual valuations as required by the trust agreement; and

Response

Exide acknowledges this requirement and will comply.

- iv. notices of nonpayment as required by the trust agreement.

Response

Exide acknowledges this requirement and will comply.

- 4. The bond must guarantee that the owner or operator will:

- a. perform post-closure care in accordance with the post-closure plan and other requirements of the permit for the facility; or

Response

Exide acknowledges this requirement and will comply.

- b. provide alternate financial assurance as specified in this Part, and obtain the administrative authority's written approval of the assurance provided, within 90 days of receipt by both the owner or operator, and the administrative authority of a notice of cancellation of the bond from the surety.

Response

Exide acknowledges this requirement and will comply.

5. Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. Following a final administrative determination by the administrative authority pursuant to R.S. 30:2025 that the owner or operator has failed to perform post-closure care in accordance with the post-closure plan and other permit requirements, under the terms of the bond the surety will perform post-closure care in accordance with the post-closure plan and other permit requirements, or will deposit the amount of the penal sum into the standby trust fund.

Response

Exide acknowledges this requirement and will comply.

6. The penal sum of the bond must be in an amount at least equal to the current post-closure cost estimate.

Response

Exide acknowledges this requirement and will comply.

7. Whenever the current post-closure cost estimate increases to an amount greater than the penal sum during the operating life of the facility, the owner or operator, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current post-closure cost estimate and submit evidence of such increase to the Office of Management and Finance, Financial Services Division; or obtain other financial assurance as specified in this Part. Whenever the current post-closure cost estimate decreases during the operating life of the facility, the penal sum may be reduced to the amount of the current post-closure cost estimate following written approval by the administrative authority.

Response

Exide acknowledges this requirement and will comply.

8. During the period of post-closure care, the administrative authority may approve a decrease in the penal sum if the owner or operator demonstrates to the administrative authority that the amount exceeds the remaining cost of post-closure care.

Response

Exide acknowledges this requirement and will comply.

9. Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator, and to the Office of Management and Finance, Financial Services Division. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the administrative authority, as evidenced by the return receipts.

Response

Exide acknowledges this requirement and will comply.

10. The owner or operator may cancel the bond if the administrative authority has given prior written consent. The administrative authority will provide such written consent when:

- a. an owner or operator substitutes alternate financial assurance as specified in this Part; or

Response

Exide acknowledges this requirement and will comply.

- b. the administrative authority releases the owner or operator from the requirements of this Part in accordance with LAC 33:V.3711.I.

Response

Exide acknowledges this requirement and will comply.

11. The surety will not be liable for deficiencies in the performance of post-closure care by the owner or operator after the administrative authority releases the owner or operator from the requirements of this Part in accordance with LAC 33:V.3711.I.

Response

Exide acknowledges this requirement and will comply.

D. Post-Closure Letter of Credit

1. **An owner or operator may satisfy the requirements of this Part by obtaining an irrevocable standby letter of credit which conforms to the requirements of this Paragraph and by submitting the letter to the Office of Management and Finance, Financial Services Division. An owner or operator of a new facility must submit the letter of credit to the administrative authority at least 60 days before the date on which hazardous waste is first received for disposal. The letter of credit must be effective before this initial receipt of hazardous waste. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.**

Response

Exide maintains financial assurances in the form of a Surety Bond guaranteeing post-closure; therefore this section regarding post-closure letter of credit does not apply. Information on the Surety Bond is presented in Appendix 9.

2. **The wording of the letter of credit must be identical to the wording specified in LAC 33:V.3719.D.**
3. **An owner or operator who uses a letter of credit to satisfy the requirements of this Part must also establish a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the administrative authority will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the administrative authority. This standby trust fund must meet the requirements of the trust fund specified in LAC 33:V.3711.A, except that:**
 - a. **an originally signed duplicate of the trust agreement must be submitted to the administrative authority with the letter of credit; and**
 - b. **unless the standby trust fund is funded pursuant to the requirements of this Part, the following are not required by these regulations:**
 - i. **payments into the trust fund as specified in LAC 33:V.3711.A.3;**

- ii. updating of Schedule A of the trust agreement to show current post-closure cost estimates;
 - iii. annual valuations as required by the trust agreement; and
 - iv. notices of nonpayment as required by the trust agreement.
- 4. The letter of credit must be accompanied by a letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the following information: the EPA identification number, name, address, and the amount of funds assured for post-closure care of the facility by the letter of credit.
- 5. The letter of credit must be irrevocable and issued for a period of at least one year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless, at least 120 days before the current expiration date, the issuing institution notifies both the owner or operator, and the administrative authority by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days will begin on the date when both the owner or operator, and the administrative authority have received the notice, as evidenced by the return receipts.
- 6. The letter of credit must be issued in an amount at least equal to the current post-closure cost estimate, except as provided in LAC 33:V.3711.G.
- 7. Whenever the current post-closure cost estimate increases to an amount greater than the amount of the credit during the operating life of the facility, the owner or operator, within 60 days after the increase, must either cause the amount of the credit to be increased so that it at least equals the current post-closure cost estimate and submit evidence of such increase to the Office of Management and Finance, Financial Services Division, or obtain other financial assurance as specified in this Part to cover the increase. Whenever the current post-closure cost estimate decreases during the operating life of the facility, the amount of the credit may be reduced to the amount of the current post-closure cost estimate following written approval by the administrative authority.
- 8. During the period of post-closure care, the administrative authority may approve a decrease in the amount of the letter of

credit if the owner or operator demonstrates to the administrative authority that the amount exceeds the remaining cost of post-closure care.

9. Following a final administrative determination by the administrative authority pursuant to R.S. 30:2025 that the owner or operator has failed to perform post-closure care in accordance with the post-closure plan and other permit requirements, the administrative authority may draw on the letter of credit.
10. If the owner or operator does not establish alternate financial assurance as specified in this Part and obtain written approval of such alternate assurance from the administrative authority within 90 days after receipt by both the owner or operator and the Office of Management and Finance, Financial Services Division of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the administrative authority will draw on the letter of credit. The administrative authority may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last 30 days of any such extension the administrative authority will draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in this Part and obtain written approval of such assurance from the administrative authority.
11. The administrative authority will return the letter of credit to the issuing institution for termination when:
 - a. an owner or operator substitutes alternate financial assurance as specified in this Part; or
 - b. the administrative authority releases the owner or operator from the requirements of this Part in accordance with LAC 33:V.3711.I.

E. Post-Closure Insurance

1. An owner or operator may satisfy the requirements of this Part by obtaining post-closure insurance which conforms to the requirements of this Paragraph and submitting a certificate of such insurance to the Office of Management and Finance, Financial Services Division. An owner or operator of a new facility must submit the certificate of insurance to the administrative authority at least 60 days before the date on which hazardous waste is first received for disposal. The insurance

must be effective before this initial receipt of hazardous waste. At a minimum, the insurer must be licensed to transact the business of insurance, or be eligible to provide insurance as an excess or surplus lines insurer in one or more states, and authorized to transact business in Louisiana.

Response

Exide maintains financial assurances in the form of a Surety Bond guaranteeing post-closure; therefore this section regarding post-closure insurance does not apply. Information on the Surety Bond is presented in Appendix 9.

2. The wording of the certificate of Insurance must be identical to the wording specified in LAC 33:V.3719.E.
3. The post-closure insurance policy must be issued for a face amount at least equal to the current post-closure cost estimate, except as provided in LAC 33:V.3711.G. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.
4. The post-closure insurance policy must guarantee that funds will be available to provide post-closure care of the facility whenever the post-closure period begins. The policy must also guarantee that once post-closure care begins, the insurer will be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the administrative authority, to such party or parties as the administrative authority specifies.
5. An owner or operator or any other person authorized to perform post-closure care may request reimbursement for post-closure expenditures by submitting itemized bills to the administrative authority. Within 60 days after receiving bills for post-closure activities, the administrative authority will instruct the insurer to make reimbursements in those amounts as the administrative authority specifies in writing, if the administrative authority determines that the post-closure expenditures are in accordance with the post-closure plan or otherwise justified. If the administrative authority does not instruct the insurer to make such reimbursements he will provide the owner or operator with a detailed written statement of reasons.

- 6. The owner or operator must maintain the policy in full force and effect until the administrative authority consents to termination of the policy by the owner or operator as specified in LAC 33:V.3711.E.11. Failure to pay the premium, without substitution of alternate financial assurance as specified in this Part, will constitute a significant violation of these regulations, warranting such remedy as the administrative authority deems necessary. Such violation will be deemed to begin upon receipt by the administrative authority of a notice of future cancellation, termination, or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.**
- 7. Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided such consent is not unreasonably refused.**
- 8. The policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the owner or operator and the Office of Management and Finance, Financial Services Division. Cancellation, termination, or failure to renew may not occur, however, during the 120 days beginning with the date of receipt of the notice by both the administrative authority and the owner or operator, as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur and the policy will remain in full force and effect in the event that on or before the date of expiration:**

 - a. the administrative authority deems the facility abandoned; or**
 - b. the permit is terminated or revoked or a new permit is denied; or**
 - c. closure is ordered by the administrative authority or a U.S. District Court or other court that can exercise jurisdiction; or**
 - d. the owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or**

e. the premium due is paid.

- 9. Whenever the current post-closure cost estimate increases to an amount greater than the face amount of the policy during the operating life of the facility, the owner or operator, within 60 days after the increase, must either cause the face amount to be increased to an amount at least equal to the current post-closure cost estimate and submit evidence of such increase to the Office of Management and Finance, Financial Services Division, or obtain other financial assurance as specified in this Part to cover the increase. Whenever the current post-closure cost estimate decreases during the operating life of the facility, the face amount may be reduced to the amount of the current post-closure cost estimate following written approval by the administrative authority.**
- 10. Commencing on the date that liability to make payments pursuant to the policy accrues, the insurer will thereafter annually increase the face amount of the policy. Such increase must be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to 85 percent of the most recent investment rates or of the equivalent coupon-issue yield announced by the U.S. Treasury for 26 week Treasury securities.**
- 11. The administrative authority will give written consent to the owner or operator that he may terminate the insurance policy when:**
 - a. an owner or operator substitutes alternate financial assurance as specified in this Part; or**
 - b. the administrative authority releases the owner or operator from the requirements of this Part in accordance with LAC 33:V.3711.I.**

F. Financial Test and Corporate Guarantee for Post-Closure Care

- 1. An owner or operator may satisfy the requirements of this Section by demonstrating that he passes a financial test as specified in this Subsection. To pass this test the owner or operator must meet the criteria of either of the following.**

Response

Exide maintains financial assurances in the form of a Surety Bond guaranteeing post-closure; therefore this section does not apply. Information on the Surety Bond is presented in Appendix 9.

a. The owner or operator must have:

- i. two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and**
- ii. net working capital and tangible net worth each at least six times the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates; and**
- iii. tangible net worth of at least \$10 million; and**
- iv. assets located in the United States amounting to at least 90 percent of his total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.**

b. The owner or operator must have:

- i. a current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by *Standard and Poor's* or Aaa, Aa, A, or Baa as issued by *Moody's*; and**
- ii. tangible net worth at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates; and**
- iii. tangible net worth of at least \$10 million; and**
- iv. assets located in the United States amounting to at least 90 percent of his total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.**

2. The phrase *current closure and post-closure cost estimates* as used in LAC 33:V.3711.F.1 refers to the cost estimates required to be shown in Paragraphs 1-4 of the letter from the owner's or operator's chief financial officer (see LAC 33:V.3719.F). The phrase *current plugging and abandonment cost estimates* used in LAC 33:V.3711.F.1 refers to the cost estimates required to be shown in Paragraphs 1-4 of the letter from the owner's or operator's chief financial officer (40 CFR 144.70.f).
3. To demonstrate that he meets this test, the owner or operator must submit the following items to the Office of Management and Finance, Financial Services Division:
 - a. a letter signed by the owner's or operator's chief financial officer and worded as specified in LAC 33:V.3719.F; and
 - b. a copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and
 - c. a special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:
 - i. he has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and
 - ii. in connection with that procedure, no matters came to his attention which caused him to believe that the specified data should be adjusted.
4. An owner or operator of a new facility must submit the items specified in LAC 33:V.3711.F.3 to the Office of Management and Finance, Financial Services Division at least 60 days before the date on which hazardous waste is first received for disposal.
5. After the initial submission of items specified in LAC 33:V.3711.F.3, the owner or operator must send updated information to the Office of Management and Finance, Financial Services Division within 90 days after the close of each

succeeding fiscal year. This information must consist of all three items specified in LAC 33:V.3711.F.3.

6. If the owner or operator no longer meets the requirements of LAC 33:V.3711.F.1 of this Part, he must send notice to the Office of Management and Finance, Financial Services Division of intent to establish alternate financial assurance as specified in this Part. The notice must be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements. The owner or operator must provide the alternate financial assurance within 120 days after the end of such fiscal year.
7. The administrative authority may, based on a reasonable belief that the owner or operator may no longer meet the requirements of LAC 33:V.3711.F.1, require reports of financial condition at any time from the owner or operator in addition to those specified in LAC 33:V.3711.F.3. If the administrative authority finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of LAC 33:V.3711.F.1, the owner or operator must provide alternate financial assurance as specified in this Part within 30 days after notification of such a finding.
8. The administrative authority may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner's or operator's financial statements (see LAC 33:V.3711.F.3). An adverse opinion or a disclaimer of opinion will be cause for disallowance. The administrative authority will evaluate other qualifications on an individual basis. Based on the application, the circumstances, and the accessibility of the applicant's assets, the administrative authority may disallow the use of this test. The owner or operator must provide alternate financial assurance as specified in this Part within 30 days after notification of the disallowance.
9. During the period of post-closure care, the administrative authority may approve a decrease in the current post-closure cost estimate for which this test demonstrates financial assurance if the owner or operator demonstrates to the administrative authority that the amount of the cost estimate exceeds the remaining cost of post-closure care.

- 10. The owner or operator is no longer required to submit the items specified in LAC 33:V.3711.F.3 when:**

 - a. an owner or operator substitutes alternate financial assurance as specified in this Part; or**
 - b. the administrative authority releases the owner or operator from the requirements of this Part in accordance with LAC 33:V.3711.I.**
- 11. An owner or operator may meet the requirements of this Section by obtaining a written guarantee. The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements for owners or operators of LAC 33:V.3711.F.1-F.9 and must comply with the terms of the guarantee. The wording of the guarantee must be identical to the wording specified in LAC 33:V.3719.H. A certified copy of the guarantee must accompany the items sent to the administrative authority specified in LAC 33:V.3711.F.3. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee. The terms of the corporate guarantee must provide that:**

 - a. If the owner or operator fails to perform post-closure care of a facility covered by the corporate guarantee in accordance with the post-closure plan and other permit requirements whenever required to do so, the guarantor will do so or establish a trust fund as specified in LAC 33:V.3711.A in the name of the owner or operator;**
 - b. the corporate guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the administrative authority. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the**

administrative authority, as evidenced by the return receipts;

- c. if the owner or operator fails to provide alternate financial assurance as specified in this Part and obtain the written approval of such alternate assurance from the administrative authority within 90 days after receipt by both the owner or operator and the administrative authority of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor will provide such alternate financial assurance in the name of the owner or operator.

- G. **Use of Multiple Financial Mechanisms.** An owner or operator may satisfy the requirements of this Section by establishing more than one financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds guaranteeing payment into a trust fund, letters of credit, and insurance. The mechanisms must be as specified in Subsections A, B, D, and E of this Section, respectively, except that it is the combination of mechanisms, rather than the single mechanism, that must provide financial assurance for an amount at least equal to the cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, he may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two or more mechanisms. The administrative authority may use any or all of the mechanisms to provide for post-closure care of the facility.

Response

Exide acknowledges the requirements of this section and will comply if multiple mechanisms are used. At this time, Exide only maintains a surety bond guaranteeing post-closure and this section does not apply.

- H. **Use of a Financial Mechanism for Multiple Facilities.** An owner or operator may use a financial assurance mechanism specified in this Section to meet the requirements of this Section for more than one facility. Evidence of financial assurance submitted to the administrative authority must include a list showing, for each facility, the EPA identification number, name, address, and the amount of funds for post-closure assured by the mechanism. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. In directing funds available through the mechanism for post-closure care of any of the facilities covered by the mechanism, the administrative authority may direct only the amount of funds designated for that facility, unless the

owner or operator agrees to the use of additional funds available under the mechanism.

Response

Exide acknowledges the requirements of this section; however the surety bond is maintained for the Baton Rouge Smelter only and this section does not apply.

- I. **Release of the Owner or Operator from the Requirements of this Part.** Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that the post-closure care period has been completed for a hazardous waste disposal unit in accordance with the approved plan, the administrative authority will notify the owner or operator that he is no longer required to maintain financial assurance for post-closure care of that unit, unless the administrative authority has reason to believe that post-closure care has not been in accordance with the approved post-closure plan. The administrative authority shall provide the owner or operator with a detailed written statement of any such reason to believe that post-closure care has not been in accordance with the approved post-closure plan.

Response

Exide acknowledges the requirements of this section and will comply.

Subchapter C. Common Closure and Post-Closure Requirements

§3713. Use of a Mechanism for Financial Assurance of Both Closure and Post-Closure Care

- A. **An owner or operator may satisfy the requirements for financial assurance for both closure and post-closure care for one or more facilities by using a trust fund, surety bond, letter of credit, insurance, financial test, or corporate guarantee that meets the specifications for the mechanism in both LAC 33:V.3707 and 3711. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism has been established and maintained for financial assurance of closure and post-closure care.**

Response

Exide acknowledges these requirements and will comply. Exide maintains one surety bond for completion of closure and post-closure at the Baton Rouge Smelter.

Subchapter D. Insurance Requirements

§3715. Liability Requirements

- A. Coverage for Sudden Accidental Occurrences.** An owner or operator of a hazardous waste treatment, storage, or disposal facility, or a group of such facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for sudden accidental occurrences in the amount of at least \$1 million per occurrence, with an annual aggregate of at least \$2 million, exclusive of legal defense costs. This liability coverage may be demonstrated as specified in LAC 33:V.3715.A.1, 2, 3, 4, 5, or 6. For any facility that treats, stores, or disposes by land treatment (i.e., surface impoundment, waste pile, landfarm, or landfill) any acute hazardous waste (see Table 3 of LAC 33:V.Chapter 49), or any toxic waste listed because of toxicity or reactivity (see Table 4 of LAC 33:V.Chapter 49) the liability coverage must be at least \$5 million per occurrence, with an annual aggregate of at least \$5 million exclusive of legal defense costs.

Response

Exide acknowledges the requirements of this section and will comply.

- 1. An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in this Paragraph.**
 - a. Each insurance policy must be amended by attachment of the Hazardous Waste Facility Liability Endorsement or evidenced by a certificate of liability insurance. The wording of the endorsement must be identical to the wording specified in LAC 33:V.3719.I. The wording of the certificate of insurance must be identical to the wording specified in LAC 33:V.3719.J. The owner or operator must submit a signed duplicate original of the endorsement or the certificate of insurance to the Office of Management and Finance, Financial Services Division. If requested by the administrative authority, the owner or operator must provide a signed duplicate original of the insurance policy. An owner or operator of a new facility must submit the signed duplicate original of the Hazardous Waste Facility Liability Endorsement or the certificate of liability insurance to the administrative authority at least 60 days before the date on which hazardous waste is first received**

for treatment, storage, or disposal. The insurance must be effective before this initial receipt of hazardous waste.

Response

Exide submitted signed duplicate originals of the certificate of insurance to the Office of Management and Finance, Financial Services Division in conjunction with previous permit submissions. A copy of Exide's current certificate of insurance is provided in Appendix 9.

- b. Each insurance policy must be issued by an insurer which, at a minimum, is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states, and authorized to transact business in Louisiana.**

Response

Exide acknowledges this requirement and will comply.

- 2. An owner or operator may meet the requirements of this Section by passing a financial test or using the corporate guarantee for liability coverage as specified in Subsections F and G of this Section.**

Response

Exide acknowledges this requirement; however this section is not applicable as Exide maintains a certificate of insurance.

- 3. An owner or operator may meet the requirements of this Section by obtaining a letter of credit for liability coverage as specified in LAC 33:V.3715.H.**

Response

Exide acknowledges this requirement; however this section is not applicable as Exide maintains a certificate of insurance.

- 4. An owner or operator may meet the requirements of this Section by obtaining a surety bond for liability coverage as specified in LAC 33:V.3715.I.**

Response

Exide acknowledges this requirement; however this section is not applicable as Exide maintains a certificate of insurance.

5. **An owner or operator may meet the requirements of this Section by obtaining a trust fund for liability coverage as specified in LAC 33:V.3715.J.**

Response

Exide acknowledges this requirement; however this section is not applicable as Exide maintains a certificate of insurance.

6. **An owner or operator may demonstrate the required liability coverage through use of combinations of financial test, insurance, guarantee, letter of credit, surety bond, and trust fund, except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor. The amounts of coverage demonstrated must total at least the minimum amounts required by this Section. If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under this Paragraph, the owner or operator shall specify at least one such assurance as "primary" coverage and shall specify other assurances as "excess" coverage.**

Response

Exide acknowledges this requirement and will comply if multiple methods of liability coverage are used.

7. **An owner or operator shall notify the Office of Management and Finance, Financial Services Division in writing within 30 days whenever:**

- a. **a claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in LAC 33:V.3715.A.1-6; or**

Response

Exide acknowledges this requirement and will comply.

- b. **a Certification of Valid Claim for bodily injury or property damages caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is entered between the owner or operator and third-party claimant for liability coverage under LAC 33:V.3715.A.1-6; or**

Response

Exide acknowledges this requirement and will comply.

- c. a final court order establishing a judgement for bodily injury or property damage caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under LAC 33:V.3715.A.1-6.

Response

Exide acknowledges this requirement and will comply.

- B. **Coverage for Non-sudden Accidental Occurrences.** An owner or operator of a surface impoundment, landfill, land treatment facility, or miscellaneous disposal unit that is used to manage hazardous waste, or a group of such facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by non-sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for non-sudden accidental occurrences in the amount of at least \$3 million per occurrence with an annual aggregate of at least \$6 million, exclusive of legal defense costs. An owner or operator who must meet the requirements of this Section may combine the required per-occurrence coverage levels for sudden and non-sudden accidental occurrence into a single per-occurrence level, and combine the required annual aggregate coverage levels for sudden and non-sudden accidental occurrences into a single annual aggregate level. Owners or operators who combine coverage levels for sudden and non-sudden accidental occurrences must maintain liability coverage in the amount of at least \$5 million per occurrence and \$10 million annual aggregate. This liability coverage may be demonstrated as specified in LAC 33:V.3715.B.1, 2, 3, 4, 5, or 6.

1. An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in this Paragraph.

- a. Each insurance policy must be amended by attachment of the Hazardous Waste Facility Liability Endorsement or evidenced by a certificate of liability insurance. The wording of the endorsement must be identical to the wording specified in LAC 33:V.3719.I. The wording of the certificate of insurance must be identical to the wording specified in LAC 33:V.3719.J. The owner or operator must

submit a signed duplicate original of the endorsement or the certificate of insurance to the administrative authority.

If requested by the Office of Management and Finance, Financial Services Division, the owner or operator must provide a signed duplicate original of the insurance policy. An owner or operator of a new facility must submit the signed duplicate original of the Hazardous Waste Facility Liability Endorsement or the certificate of liability insurance to the administrative authority at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The insurance must be effective before this initial receipt of hazardous waste.

Response

Exide submitted signed duplicate originals of the certificate of insurance to the Office of Management and Finance, Financial Services Division in conjunction with previous permit submissions. A copy of Exide's current certificate of insurance is provided in Appendix 9.

- b. Each insurance policy must be issued by an insurer which, at a minimum, is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer in one or more states and authorized to transact business in Louisiana.

Response

Exide acknowledges this requirement and will comply.

2. An owner or operator may meet the requirements of this Section by passing a financial test or using the guarantee for liability coverage as specified in LAC 33:V.3715.F and G.

Response

Exide acknowledges this requirement; however this section is not applicable as Exide maintains a certificate of insurance.

3. An owner or operator may meet the requirements of this Section by obtaining a letter of credit for liability coverage as specified in LAC 33:V.3715.H.

Response

Exide acknowledges this requirement; however this section is not applicable as Exide maintains a certificate of insurance.

4. **An owner or operator may meet the requirements of this Section by obtaining a surety bond for liability coverage as specified in LAC 33:V.3715.I.**

Response

Exide acknowledges this requirement; however this section is not applicable as Exide maintains a certificate of insurance.

5. **An owner or operator may meet the requirements of this Section by obtaining a trust fund for liability coverage as specified in LAC 33:V.3715.J.**

Response

Exide acknowledges this requirement; however this section is not applicable as Exide maintains a certificate of insurance.

6. **An owner or operator may demonstrate the required liability coverage through use of combinations of financial test, insurance, guarantee, letter of credit, surety bond, and trust fund, except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor. The amounts of coverage demonstrated must total at least the minimum amounts required by this Section. If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under this Paragraph, the owner or operator shall specify at least one such assurance as "primary" coverage and shall specify other assurance as "excess" coverage.**

Response

Exide acknowledges this requirement and will comply if multiple methods of liability coverage are used.

7. **An owner or operator shall notify the Office of Management and Finance, Financial Services Division in writing within 30 days whenever:**

- a. **a claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in LAC 33:V.3715.B.1-6; or**

Response

Exide acknowledges this requirement and will comply.

- b. a Certification of Valid Claim for bodily injury or property damages caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is entered between the owner or operator and third-party claimant for liability coverage under LAC 33:V.3715.B.1-6; or

Response

Exide acknowledges this requirement and will comply.

- c. a final court order establishing a judgment for bodily injury or property damage caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under LAC 33:V.3715.B.1-6.

Response

Exide acknowledges this requirement and will comply.

- C. **Request for Variance.** If an owner or operator can demonstrate to the satisfaction of the administrative authority that the levels of financial responsibility required by Subsections A and B of this Section are not consistent with the degree and duration of risk associated with treatment, storage, or disposal at the facility or group of facilities, the owner or operator may obtain a variance from the administrative authority. The request for a variance must be submitted to the administrative authority as part of the application under LAC 33:V.Chapter 5 for a facility that does not have a permit, or pursuant to the procedures for permit modification under LAC 33:V.Chapter 3 for a facility that has a permit. If granted, the variance will take the form of an adjusted level of required liability coverage, such level to be based on the administrative authority's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. The administrative authority may require an owner or operator who requests a variance to provide such technical and engineering information as is deemed necessary by the administrative authority to determine a level of financial responsibility other than that required by Subsections A and B of this Section. Any request for a variance for a permitted facility will be treated as a request for a permit modification under LAC 33:V.321.

Response

This section does not apply as Exide is not requesting a variance.

- D. Adjustments by the Administrative Authority.** If the administrative authority determines that the levels of financial responsibility required by LAC 33:V.3715.A or B are not consistent with the degree and duration of risk associated with treatment, storage, or disposal at the facility or group of facilities, the administrative authority may adjust the level of financial responsibility required by LAC 33:V.3715.A and B as may be necessary to protect human health and the environment. This adjusted level will be based on the administrative authority's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. In addition, if the administrative authority determines that there is a significant risk to human health and the environment from non-sudden accidental occurrences resulting from the operations of a facility that is not a surface impoundment, landfill, or land treatment facility, he may require that an owner or operator of the facility comply with LAC 33:V.3715.B. An owner or operator must furnish to the Office of Management and Finance, Financial Services Division, within a reasonable time, any information which the administrative authority requests to determine whether cause exists for such adjustments of level or type of coverage. Any adjustment of the level or type of coverage for a facility that has a permit will be treated as a permit modification under LAC 33:V.321.

Response

Exide acknowledges this requirement and will comply.

- E. Period of Coverage.** Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that final closure has been completed in accordance with the approved closure plan, the administrative authority will notify the owner or operator in writing that he is no longer required by this Section to maintain liability coverage for that facility, unless the administrative authority has reason to believe that closure has not been in accordance with the approved closure plan.

Response

Exide acknowledges this requirement and will comply.

- F. Financial Test for Liability Coverage**

- 1. An owner or operator may satisfy the requirements of this Section by demonstrating that he passes a financial test as specified in this Subsection. To pass this test the owner or operator must meet the criteria of either LAC 33:V.3715.F.1.a or b below.**

Response

Exide acknowledges this requirement; however this section is not applicable as Exide maintains a certificate of insurance.

- a. The owner or operator must have:
 - i. net working capital and tangible net worth each at least six times the amount of liability coverage to be demonstrated by the test; and
 - ii. tangible net worth of at least \$10 million; and
 - iii. assets located in the United States amounting to either at least 90 percent of his total assets or at least six times the amount of liability coverage to be demonstrated by this test.
- b. The owner or operator must have:
 - i. a current rating for his most recent bond issuance of AAA, AA, A, or BBB as Issued by *Standard and Poor's* or Aaa, Aa, A, or Baa as issued by *Moody's*; and
 - ii. tangible net worth of at least \$10 million; and
 - iii. tangible net worth at least six times the amount of liability coverage to be demonstrated by this test; and
 - iv. assets located in the United States amounting to either at least 90 percent of total assets or at least six times the amount of liability coverage to be demonstrated by this test.
- 2. The phrase amount of liability coverage as used in LAC 33:V.3715.F.1 refers to the annual aggregate amounts for which coverage is required under LAC 33:V.3715.A and B.
- 3. To demonstrate that he meets this test, the owner or operator must submit the following three items to the Office of Management and Finance, Financial Services Division:
 - a. a letter signed by the owner's or operator's chief financial officer and worded as specified in LAC 33:V.3719.G. If an owner or operator is using the financial test to demonstrate both assurance for closure or post-closure

care, as specified by LAC 33:V.3707.F, 3711.F, 4403.E, and 4407.E, and liability coverage, he must submit the letter specified in LAC 33:V.3719.G to cover both forms of financial responsibility; a separate letter as specified in LAC 33:V.3719.F is not required;

- b. a copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year;
 - c. a special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:
 - i. he has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and
 - ii. in connection with that procedure, no matters came to his attention which caused him to believe that the specified data should be adjusted.
4. An owner or operator of a new facility must submit the items specified in LAC 33:V.3715.F.3 to the Office of Management and Finance, Financial Services Division at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal.
5. After the initial submission of items specified in LAC 33:V.3715.F.3, the owner or operator must send updated information to the administrative authority within 90 days after the close of each succeeding fiscal year. This information must consist of all three items specified in LAC 33:V.3715.F.3.
6. If the owner or operator no longer meets the requirements of LAC 33:V.3715.F.1, he must obtain insurance, a letter of credit, a surety bond, a trust fund, or a guarantee for the entire amount of required liability coverage as specified in this Section. Evidence of liability coverage must be submitted to the Office of Management and Finance, Financial Services Division within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the test requirements.

7. The administrative authority may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner's or operator's financial statements (see LAC 33:V.3715.F.3). An adverse opinion or a disclaimer of opinion will be cause for disallowance. The administrative authority will evaluate other qualifications on an individual basis. Based on the application, the circumstances and the accessibility of the applicant's assets, the administrative authority may disallow the use of this test. The owner or operator must provide evidence of insurance for the entire amount of required liability coverage as specified in this Part within 30 days after notification of disallowance.
 8. The corporate guarantee authorized for use to demonstrate financial assurance for closure and/or post-closure may not be used to demonstrate financial assurance for liability coverage.
- G. **Guarantee for Liability Coverage.** Subject to LAC 33:V.3715.G.2, an owner or operator may meet the requirements of this Section by obtaining a written guarantee, hereinafter referred to as "guarantee." The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements for owners or operators in LAC 33:V.3715.F.1-7. The wording of the guarantee must be identical to the wording specified in LAC 33:V.3719. A certified copy of the guarantee must accompany the items sent to the administrative authority as specified in LAC 33:V.3715.F.3. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, this letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee.

Response

Exide acknowledges this requirement; however this section is not applicable as Exide maintains a certificate of insurance.

1. If the owner or operator fails to satisfy a judgement based on a determination of liability for bodily injury or property damage to third parties caused by sudden or non-sudden accidental occurrences (or both as the case may be), arising from the

operation of facilities covered by this guarantee, or fails to pay an amount agreed to in settlement of claims arising from or alleged to arise from such injury or damage, the guarantor will do so up to the limits of coverage.

2. In the case of corporations incorporated in the United States, a guarantee may be used to satisfy the requirements of this Section only if the attorney general or insurance commissioner of the state in which the guarantor is incorporated and the attorney general or insurance commissioner of Louisiana have submitted written statements to the department that a guarantee executed as described in this Section and LAC 33:V.3719.H.2 is a legally valid and enforceable obligation in that state.
3. In the case of corporations incorporated outside the United States, a guarantee may be used to satisfy the requirements of this Section only if the non-U.S. corporation has identified a registered agent for service of process in Louisiana and in the state in which it has its principal place of business, and the attorney general or insurance commissioner of Louisiana and the state in which the guarantor corporation has its principal place of business have submitted written statements to the department that a corporate guarantee executed as described in this Section and LAC 33:V.3719.H.2 is a legally valid and enforceable obligation in that state.

H. Letter of Credit for Liability Coverage

1. An owner or operator may satisfy the requirements of this Section by obtaining an irrevocable standby letter of credit that conforms to the requirements of this Subsection and submitting a copy of the letter of credit to the Office of Management and Finance, Financial Services Division.

Response

Exide acknowledges this requirement; however this section is not applicable as Exide maintains a certificate of insurance.

2. The financial institution issuing the letter of credit must be an entity that has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a federal or state agency.
3. The wording of the letter of credit must be identical to the wording specified in LAC 33:V.3719.K.

4. An owner or operator who uses a letter of credit to satisfy the requirements of this Section may also establish a standby trust fund. Under the terms of such a letter of credit, all amounts paid pursuant to a draft by the trustee of the standby trust will be deposited by the issuing institution into the standby trust in accordance with instructions from the trustee. The trustee of the standby trust fund must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.
5. The wording of the standby trust fund must be identical to the wording specified in LAC 33:V.3719.N.

I. Surety Bond for Liability Coverage

1. An owner or operator may satisfy the requirements of this Section by obtaining a surety bond that conforms to the requirements of this Subsection and submitting a copy of the bond to the Office of Management and Finance, Financial Services Division.

Response

Exide acknowledges this requirement; however this section is not applicable as Exide maintains a certificate of insurance.

2. The surety company issuing the bond must be among those listed as acceptable sureties on federal bonds in the most recent Circular 570 of the U.S. Department of the Treasury.
3. The wording of the surety bond must be identical to the wording specified in LAC 33:V.3719.L.
4. A surety bond may be used to satisfy the requirements of this Section only if the attorney general or insurance commissioner of the state in which the surety is incorporated and the attorney general or insurance commissioner of Louisiana have submitted a written statement to EPA that a surety bond executed as described in this Section and LAC 33:V.3719.L is a legally valid and enforceable obligation in that state.

J. Trust Fund for Liability Coverage

1. An owner or operator may satisfy the requirements of this Section by establishing a trust fund that conforms to the requirements of this Paragraph and submitting an originally

signed duplicate of the trust agreement to the Office of Management and Finance, Financial Services Division.

Response

Exide acknowledges this requirement; however this section is not applicable as Exide maintains a certificate of insurance.

2. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.
 3. The trust fund for liability coverage must be funded for the full amount of the liability coverage to be provided by the trust fund before it may be relied upon to satisfy the requirements of this Section. If at any time after the trust fund is created the amount of funds in the trust fund is reduced below the full amount of the liability coverage to be provided, the owner or operator, by the anniversary date of the establishment of the fund, must either add sufficient funds to the trust fund to cause its value to equal the full amount of liability coverage to be provided, or obtain other financial assurance as specified in this Section to cover the difference. For purposes of this Paragraph, "the full amount of the liability coverage to be provided" means the amount of coverage for sudden and/or non-sudden occurrences required to be provided by the owner or operator by this Section, less the amount of financial assurance for liability coverage that is being provided by other financial assurance mechanisms being used to demonstrate financial assurance by the owner or operator.
 4. The wording of the trust fund must be identical to the wording specified in LAC 33:V.3719.M.
- K. Notwithstanding any other provision of LAC 33:V.Subpart 1, an owner or operator using liability insurance to satisfy the requirements of this Section may use, until October 16, 1982, a Hazardous Waste Facility Liability Endorsement or Certificate of Liability Insurance that does not certify that the insurer is licensed to transact the business of insurance, or eligible as an excess or surplus lines insurer, in one or more states.

Response

Exide acknowledges this requirement and will comply.

Subchapter E. Incapacity Regulations

§3717. Incapacity of Owners or Operators, Guarantors, or Financial Institutions

- A. An owner or operator must notify the Office of Management and Finance, Financial Services Division by certified mail of the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming the owner or operator as debtor, within 10 days after commencement of the proceeding. A guarantor of a corporate guarantee as specified in LAC 33:V.3707.F and 3711.F must make such a notification if he is named as debtor, as required under the terms of the corporate guarantee (see LAC 33:V.3719.H).**

Response

During regular correspondence with LDEQ, Exide previously provided verbal notice that Exide had filed for relief under Chapter 11 of Title 11 of the US Code effective April 15, 2002. While LDEQ has been verbally notified, Exide will also submit written notice per this requirement.

- B. An owner or operator who fulfills the requirements of LAC 33:V.3707, 3711 or 3715 by obtaining a trust fund, surety bond, letter of credit, or insurance policy will be deemed to be without the required financial assurance or liability coverage in the event of bankruptcy of the trustee or issuing institution, or a suspension or revocation of the authority of the trustee institution to act as trustee or of the institution issuing the surety bond, letter of credit, or insurance policy to issue such instruments. The owner or operator must establish other financial assurance or liability coverage within 60 days after such an event.**

Response

Exide acknowledges this requirement and will comply.

Subchapter F. Financial and Insurance Instruments

§3719. Wording of the Instruments

- A. A trust agreement for a trust fund as specified in LAC 33:V.3707.A or 3711.A or 4403.A or 4407.A must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:**

Response

Exide acknowledges this requirement; however this section regarding trust funds does not apply as Exide maintains a surety bond.

1.

TRUST AGREEMENT

Trust Agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator], a [name of state] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert "incorporated in the State of ____" or "a national bank" or "a state bank"], the "Trustee."

WHEREAS, the Department of Environmental Quality of the State of Louisiana, an agency of the State of Louisiana, has established certain regulations applicable to the grantor, requiring that an owner or operator of a hazardous waste management facility shall provide assurance that funds will be available when needed for closure and/or post-closure care of the facility;

WHEREAS, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the facility identified herein;

WHEREAS, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee.

NOW, THEREFORE, the Grantor and the Trustee agree as follows:

Section 1. Definitions

As used in this agreement:

- (a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.
- (b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.
- (c) The term "Secretary" means the Secretary, Louisiana Department of Environmental Quality and any successor agency.
- (d) The term "administrative authority" means the Secretary, or a person designated by him or her to act therefore.

Section 2. Identification of Facilities and Cost Estimates

This Agreement pertains to the facilities and cost estimates identified on attached Schedule A [on Schedule A, for each facility list the EPA Identification Number, name, address, and the current closure and/or post-closure cost estimates, or portions thereof, for which financial assurance is demonstrated by this Agreement].

Section 3. Establishment of Fund

The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the Louisiana Department of Environmental Quality. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. [Note: Standby Trust Agreements need not be funded at the time of execution. In the case of Standby Trust Agreements, Schedule B should be blank but for a statement that the Agreement is not presently funded, but shall be funded by the financial assurance document used by the Grantor in accordance with the terms of that document.] Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the administrative authority.

Section 4. Payment for Closure and Post-Closure Care

The Trustee shall make payments from the Fund as the administrative authority shall direct, in writing, to provide for the payment of the costs of closure and/or post-closure care of the facility covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by the administrative authority from the Fund for closure and post-closure expenditures in such amounts as the administrative authority shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the administrative authority specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund

Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management

The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this part. In investing, reinvesting, exchanging, selling, and managing the Fund, the trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims, except that:

- A. securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2.(a), shall not be acquired or held, unless they are securities or other obligations of the federal or a state government;**
- B. the Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and**
- C. the Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.**

Section 7. Commingling and Investment

The Trustee is expressly authorized in its discretion:

- A. to transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and**

- B. to purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.**

Section 8. Express Powers of Trustee

Without in any way limiting the powers and discretion conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

- A. to sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;**
- B. to make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;**
- C. to register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;**
- D. to deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent**

insured by an agency of the Federal or State government;
and

- E. to compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses

All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuation

The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the administrative authority a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the administrative authority shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel

The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation

The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the administrative authority, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Part shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee

All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests and instructions. All orders, requests, and instructions by the administrative authority to the Trustee shall be in writing, signed by the administrative authority, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or administrative authority hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or administrative authority, except as provided for herein.

Section 15. Notice of Nonpayment

The Trustee shall notify the Grantor and the administrative authority, by certified mail, within ten days following the

expiration of the thirty-day period after the anniversary of the establishment of the Trust, if no payment is received from the Grantor during that period. After the pay-in period is completed, the Trustee shall not be required to send a notice of nonpayment.

Section 16. Amendment of Agreement

This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the administrative authority, or by the Trustee and the administrative authority, if the Grantor ceases to exist.

Section 17. Irrevocability and Termination

Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the administrative authority, or by the Trustee and the administrative authority, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to Grantor.

Section 18. Immunity and Indemnification

The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the administrative authority issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law

This Agreement shall be administered, construed, and enforced according to the laws of the State of Louisiana.

Section 20. Interpretation

As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall

not affect the interpretation or the legal efficacy of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in LAC 33:V.3719.A.1 as such regulations were constituted on the date first above written.

WITNESSES: GRANTOR:

By: _____

Its: _____
(SEAL)

TRUSTEE:

By: _____

Its: _____
(SEAL)

THUS DONE AND PASSED in my office in _____, on the _____ day of _____, 20____, in the presence of _____ and competent witnesses, who hereunto sign their names with the said appearers and me, Notary, after reading the whole.

NOTARY PUBLIC

2. The following is an example of the certification of acknowledgement which must accompany the trust agreement for a trust fund as specified in LAC 33:V.3707.A.2 or 4403.A.2 or 4407.A.2.

STATE OF LOUISIANA

PARISH OF _____

BE IT KNOWN, that on this _____ day of _____, 20____, before me, the undersigned Notary Public, duly commissioned and qualified within the State and Parish aforesaid, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared _____, to me well known, who declared and acknowledged that he had signed and executed the foregoing instrument as his act and deed, and as the act and deed of the _____, a corporation, for the consideration, uses and purposes and on terms and conditions therein set forth.

And the said appearer, being by me first duly sworn, did depose and say that he is the _____ of said corporation and that he

signed and executed said instrument in his said capacity, and under authority of the Board of Directors of said corporation.

Thus done and passed in the State and Parish aforesaid, on the day and date first hereinabove written, and in the presence of _____ and _____, competent witnesses, who have hereunto subscribed their names as such, together with said appearer and me, said authority, after due reading of the whole.

WITNESSES:

_____ NOTARY PUBLIC

- B. **Payment Bond.** A surety bond guaranteeing payment into a trust fund, as specified in LAC 33:V.3707.B or 3711.B or 4403.B or 4407.B, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

Response

Exide acknowledges this requirement and will comply.

FINANCIAL GUARANTEE BOND

Date bond executed: _____

Effective date: _____

Principal: [legal name and business address of owner or operator]

Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"]

State of incorporation: _____

Surety(ies): [name(s) and business address(es)]

EPA Identification Number, name, address, and closure and/or post-closure amount(s) for each facility guaranteed by this bond [indicate closure and post-closure amounts separately]: _____

Total penal sum of bond: \$ _____

Surety's bond number: _____

Know All Persons By These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the Louisiana Department of Environmental Quality in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

WHEREAS, said Principal is required, under the Resource Conservation and Recovery Act (RCRA) as amended and the Louisiana Environmental Quality Act, R.S. 30:2001 et seq., to have a permit in order to own or operate the hazardous waste management facility(ies) identified above; and

WHEREAS, the Principal is required by law to provide financial assurance for closure or closure and post-closure care, as a condition of the permit or interim status; and

WHEREAS, said Principal shall establish a standby trust fund as is required by LAC 33:V.Chapter 37 when a surety bond is used to provide such financial assurance;

NOW THEREFORE, the conditions of the obligation are such that if the Principal shall faithfully, before the beginning of final closure of the facility identified above, fund the standby trust fund in the amount(s) identified above for the facility,

OR, if the Principal shall fund the standby trust fund in such amount(s) within 15 days after a final order to begin final closure is issued by the Secretary, or a court of competent jurisdiction,

OR, if the Principal shall provide alternate financial assurance as specified in LAC 33:V.Chapter 37, and obtain written approval from the administrative authority of such assurance, within 90 days after the date notice of cancellation is received by both the Principal and the administrative authority from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon

notification by the administrative authority that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the administrative authority.

The Surety(ies) hereby waives notification of amendments to closure plans, permits, applicable laws, statutes, rules, and regulations, and agrees that no such amendment shall in any way alleviate its obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of the penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the administrative authority, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of notice of cancellation by the Principal and the administrative authority, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies) and to the administrative authority, provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the administrative authority.

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly in accordance with LAC 33:V.Chapter 37, and the conditions of the Hazardous Waste Facility permit so that it guarantees a new closure and/or post-closure amount, provided that the penal sum does not increase or decrease without the written permission of the administrative authority.

The Principal and Surety(ies) hereby agree that no portion of the penal sum may be expended without prior written approval of the administrative authority.

IN WITNESS WHEREOF, the Principal and the Surety have executed this FINANCIAL GUARANTEE BOND and have affixed their seals on the date set forth above.

Those persons whose signatures appear below hereby certify that they are authorized to execute this FINANCIAL GUARANTEE BOND on behalf of the Principal and Surety(ies), that each Surety hereto is

authorized to do business in the State of Louisiana, and that the wording of this surety bond is identical to the wording specified in LAC 33:V.3719.B as such regulations were constituted on the date this bond was executed.

PRINCIPAL

[Signature(s)] _____
[Name(s)] _____
[Title(s)] _____
[Corporate Seal] _____

CORPORATE SURETIES

[Name and address] _____
State of Incorporation: _____
Liability Limit: _____
[Signature(s)] _____
[Name(s) and title(s)] _____
[Corporate Seal] _____
[This information must be provided for each co-surety]
Bond Premium: \$ _____

- C. Performance Bond. A surety bond guaranteeing performance of closure and/or post-closure care, as specified in LAC 33:V.3707.C or 3711.C must be worded as follows, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted.

Response

Exide acknowledges the requirements of this section and will comply.

PERFORMANCE BOND

Date bond executed: _____
Effective date: _____
Principal: [Legal name and business address of owner or operator]
Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"]
State of incorporation: _____
Surety(ies): [Name(s) and business address(es)] _____
LHW/EPA Identification Number, name, address, and closure and/or post-closure amount(s) for each facility guaranteed by this bond [indicate closure and post-closure separately]: _____

Total penal sum of bond: \$ _____
Surety's bond number _____

Know All Persons By These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the Louisiana Department of Environmental Quality in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

WHEREAS, said Principal is required, under the Resource Conservation and Recovery Act as amended (RCRA) and the Louisiana Environmental Quality Act, R.S. 30:2001, et seq., to have a permit in order to own or operate the hazardous waste management facility(ies) identified above; and

WHEREAS, the Principal is required by law to provide financial assurance for closure and post-closure care, as a condition of the permit; and

WHEREAS, said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

NOW, THEREFORE, the conditions of this obligation are such that if the Principal shall faithfully perform closure, whenever required to do so, of the facility for which this bond guarantees closure, in accordance with the closure plan and other requirements of the permit as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended;

AND, if the Principal shall faithfully perform post-closure care of each facility for which this bond guarantees post-closure care, in accordance with the post-closure plan and other requirements of the permit, as such plan and permit may be amended pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended.

OR, if the Principal shall provide alternate financial assurance as specified in LAC 33:V.Chapter 37, and obtain the administrative authority's written approval of such assurance, within 90 days after the date notice of cancellation is received by both the Principal and administrative authority, then this obligation shall be null and void; otherwise it is to remain in full force and effect.

The Surety shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described hereinabove.

Upon notification by the administrative authority that the Principal has been found in violation of the closure requirements of LAC 33:V.Chapter 37 or of its permit, for the facility for which this bond guarantees performances of closure, the Surety(ies) shall either perform closure in accordance with the closure plan and other permit requirements, or place the closure amount guaranteed for the facility into the standby trust fund as directed by the administrative authority.

Upon notification by the administrative authority that the Principal has been found in violation of the post-closure requirements of the Hazardous Waste Regulations or of its permit for the facility for which this bond guarantees performance of post-closure, the surety(ies) shall either perform post-closure in accordance with the post-closure plan and other permit requirements or place the post-closure amount guaranteed for the facility into the standby trust fund as directed by the administrative authority.

Upon notification by the administrative authority that the Principal has failed to provide alternate financial assurance as specified in LAC 33:V.Chapter 37, and obtain written approval of such assurance from the administrative authority during the 90 days following receipt by both the Principal and the administrative authority of a notice of cancellation of the bond, the Surety(ies) shall place funds in the amount guaranteed for the facility into the standby fund as directed by the administrative authority.

The Surety(ies) hereby waive(s) notification of amendments to closure plans, permits, applicable laws, statutes, rules, and regulations, and agree(s) that no such amendment shall in any way alleviate its obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment on succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of the penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the administrative authority, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of notice of cancellation by both the Principal and the administrative authority, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety and to the administrative authority, provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the administrative authority.

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly in accordance with LAC 33:V.Chapter 37, and the conditions of the Hazardous Waste Facility permit so that it guarantees a new closure and/or post-closure amount, provided that the penal sum does not increase or decrease without the written permission of the administrative authority.

The Principal and Surety(ies) hereby agree that no portion of the penal sum may be expended without prior written approval of the administrative authority.

IN WITNESS WHEREOF, the Principal and the Surety(ies) have executed this PERFORMANCE BOND and have affixed their seals on the date set forth above.

Those persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies), and that the wording of this surety bond is identical to the wording specified in LAC 33:V.3719.C as such regulation was constituted on the date this bond was executed.

PRINCIPAL

[Signature(s)] _____
[Name(s)] _____
[Title(s)] _____
[Corporate Seal] _____

CORPORATE SURETY(IES)

[Name and address] _____
State of incorporation: _____

Liability limit: \$ _____
[Signature(s)] _____
[Name(s) and title(s)] _____
[Corporate Seal]

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: \$ _____

- D. Letter of Credit. A letter of credit, as specified in LAC 33:V.3707.D or 3711.D or 4403.C or 4407.C must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

Response

Exide acknowledges this requirement; however this section regarding a letter of credit does not apply as Exide maintains a surety bond.

IRREVOCABLE STANDBY LETTER OF CREDIT

Secretary
Louisiana Department of Environmental Quality
P.O. Box 82231
Baton Rouge, LA 70884-2231
Dear [Sir or Madam]:

We hereby establish our Irrevocable Standby Letter of Credit Number in favor of the Department of Environmental Quality of the State of Louisiana at the request and for the account of [owner's or operator's name and address] up to the aggregate amount of U.S. dollars \$ upon presentation of:

1. a sight draft, bearing reference to the Letter of Credit Number drawn by the Secretary or his or her designated representative, together with;
2. a statement signed by the Secretary or his or her designated representative, reading as follows:

"I certify that the amount of the draft is payable pursuant to regulations issued under authority of the Louisiana Environmental Quality Act, R.S. 30:2001, et seq."

This Letter of Credit is effective as of _____, _____, and shall expire on _____, _____ [date at least one year later], but such expiration date will be automatically extended for a period of at least one year on the above

expiration date [____, ____] and on each successive expiration date thereafter, unless, at least 120 days before the then current expiration date, we notify both you and [name of owner/operator] by certified mail that we have decided not to extend this Letter of Credit beyond the then current expiration date. In the event we give such notification, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by both you and [name of owner/operator], as shown on the signed return receipts.

Whenever this Letter of Credit is drawn under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [name of owner/operator] in accordance with your instructions.

We certify that the wording of this Letter of Credit is identical to the wording specified in LAC 33:V.3719.D as such regulations were constituted on the date shown immediately below.

[Signature(s) and Titles of Official(s) of issuing institutions]
[DATE]

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce," or "the Uniform Commercial Code"].

- E. A certificate of insurance, as specified in LAC 33:V.3707.E or 3711.E or 4403.D or 4407.D, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

Response

Exide acknowledges this requirement and will comply.

**CERTIFICATE OF INSURANCE FOR CLOSURE OR
POST-CLOSURE CARE**

Name and Address of Insurer
(herein called the "Insurer"): _____

Name and Address of Insured
(herein called the "Insured"): _____

Facilities Covered: [List for each facility: EPA Identification Number, name, address, and the amount of insurance for closure and/or the amount for post-closure care (these amounts for all facilities covered must total the face amount shown below).]

Face Amount: \$ _____
Policy Number: _____
Effective Date: _____

The Insurer hereby certifies that it has issued to the Insured the policy of insurance identified above to provide financial assurance for [insert "closure" or "closure and post-closure care" or "post-closure care"] for the facilities identified above. The Insurer further warrants that such policy conforms in all respects with the requirements of LAC 33:V.3707.E, 3711.E, 4403.D, and 4407.D as applicable and as such regulations were constituted on the date shown immediately below. It is agreed that any provision of the policy inconsistent with such regulations is hereby amended to eliminate such inconsistency.

Whenever requested by the administrative authority, the Insurer agrees to furnish to the administrative authority a duplicate original of the policy listed above, including all endorsements thereon.

I hereby certify that the wording of this certificate is identical to the wording specified in LAC 33:V.3719.E as such regulations were constituted on the date shown immediately below and that Insurer is authorized to conduct insurance business in the State of Louisiana.

[Authorized signature for Insurer]
[Name of person signing][Title of person signing]
Signature of witness or notary: _____ [Date]

- F. Closure Guarantee. A letter from the chief financial officer, as specified in LAC 33:V.3707.F.3 or 3711.F.3 or 4403.E.3 or 4407.E.3 must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

Response

Exide acknowledges the requirements of this section; however this section does not apply as Exide maintains a surety bond and certificate of insurance.

LETTER FROM CHIEF FINANCIAL OFFICER

Secretary
Louisiana Department of Environmental Quality
P.O. Box 82231
Baton Rouge, LA 70884-2231

Dear [Sir or Madam]:

I am the chief financial officer of [name and address of firm]. This letter is in support of this firm's use of the financial test to demonstrate financial assurance for closure and/or post-closure costs, as specified in LAC 33:V.Chapter 37 and 43.

[Fill out the following five paragraphs. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA Identification Number, name, address, and current closure and/or post-closure cost estimates. Identify each cost as to whether it is for closure or post-closure.]

1. This firm is the owner or operator of the following facilities for which financial assurance for closure or post-closure costs is being demonstrated through the financial test specified in LAC 33:V.Chapters 37 and 43. The current closure and/or post-closure cost estimates covered by the test are shown for each facility:
_____.
2. This firm guarantees, through the guarantee specified in LAC 33:V.Chapters 37 and 43, financial assurance for closure or post-closure costs at the following facilities owned or operated by the guaranteed party. The current cost estimates for the closure or post-closure care so guaranteed are shown for each facility:
_____. The firm identified above is [insert one or more: (1) the direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee _____; or (3) engaged in the following substantial business relationship with the owner or operator _____, and receiving the following value in consideration of this guarantee [____]]. [Attach a written description of the business relationship or a copy of the contract establishing each relationship to this letter].
3. In states other than Louisiana, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the closure or post-closure care of the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in LAC 33:V.Chapters 37 and 43. The current closure and/or post-closure cost estimates covered by such a test are shown for each facility: _____.
4. This firm is the owner or operator of the following hazardous waste management facilities for which financial assurance for closure or, if a disposal facility, post-closure care, is not demonstrated either to the U.S. Environmental Protection Agency

or to a state through the financial test or any other financial assurance mechanism specified in LAC 33:V.Chapters 37 and 43 or equivalent or substantially equivalent state mechanisms. The current closure and/or post-closure cost estimates not covered by such financial assurance are shown for each facility:_____.

5. This firm is the owner or operator or guarantor of the following UIC facilities for which financial assurance for plugging and abandonment is required under 40 CFR Part 144. The current closure cost estimates as required by 40 CFR 144.62 are shown for each facility: _____.

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

[Fill in Alternative I if the first criteria of LAC 33:V.3707.F.1 or 3711.F.1 or the first criteria of LAC 33:V.4403.E.1 or 4407.E.1 are used. Fill in Alternative II if the second criteria of LAC 33:V.3707.F.1 or 3711.F.1 or the second criteria of LAC 33:V.4403.E.1 or 4407.E.1 are used.]

ALTERNATIVE I

1. Sum of current closure and post-closure estimates [total of all cost estimates shown in the five paragraphs above]: \$_____
- *2. Total liabilities [if any portion of the closure or post-closure cost estimates is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to lines 3 and 4]:\$_____.
- *3. Tangible net worth:\$_____.
- *4. Net worth:\$_____.
5. Current assests:\$_____.
- *6. Current Liabilities:\$_____.
7. Net working capital [line 5 minus line 6]: \$_____

- *8. The sum of net income plus depreciation, depletion, and amortization: \$ _____
- *9. Total assets in U.S. (required only if less than 90 percent of firm's assets are located in the U.S.): \$ _____
- | | YES | NO |
|--|-------|-------|
| 10. Is line 3 at least \$10 million? | _____ | _____ |
| 11. Is line 3 at least six times line 1? | _____ | _____ |
| 12. Is line 7 at least six times line 1? | _____ | _____ |
| *13. Are at least 90 percent of firm's assets located in the U.S.? If not, complete line 14. | _____ | _____ |
| 14. Is line 9 at least six times line 1? | _____ | _____ |
| 15. Is line 2 divided by line 4 less than 2.0? | _____ | _____ |
| 16. Is line 8 divided by line 2 greater than 0.1? | _____ | _____ |
| 17. Is line 5 divided by line 6 greater than 1.5? | _____ | _____ |

ALTERNATIVE II

1. Sum of current closure and post-closure cost estimates [total of all cost estimates shown in the five paragraphs above] \$ _____
2. Current bond rating of most recent issuance of this firm and name of rating service: _____
3. Date of issuance of bond: _____
4. Date of maturity of bond: _____
- *5. Tangible net worth [if any portion of the closure and post-closure cost estimate is included in "total liabilities" on your firm's financial statements, you may add the amount of that portion to this line]: \$ _____
- *6. Total assets in U.S. [required only if less than 90 percent of firm's assets are located in the U.S.]: \$ _____
- | | YES | NO |
|-------------------------------------|-------|-------|
| 7. Is line 5 at least \$10 million? | _____ | _____ |

*8. Is line 5 greater than six times line 1? _____

*9. Are at least 90 percent of firm's assets located in the U.S.? If not, complete line 10. _____

10. Is line 6 at least six times line 1? _____

I hereby certify that the wording of this letter is identical to the wording specified in LAC 33:V.3719.F as such regulations were constituted on the date shown immediately below.

[Signature] _____

[Name] _____

[Title] _____

[Date] _____

- G. **Liability Coverage Guarantee.** A letter from the chief financial officer, as specified in LAC 33:V.3715.F or 4411, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Response

Exide acknowledges this requirement; however this section regarding liability coverage guarantee does not apply as Exide maintains a certificate of liability.

Secretary
Louisiana Department of Environmental Quality
P.O. Box 82231
Baton Rouge, LA 70884-2231

Dear [Sir or Madam]:

I am the chief financial officer of [firm's name and address]. This letter is in support of the use of the financial test to demonstrate financial responsibility for liability coverage [insert "and closure and/or post-closure care" if applicable] as specified in LAC 33:V.Chapter 37 or 43.

[Fill out the following paragraph regarding facilities and liability coverage. If there are no facilities that belong in a particular paragraph, write "none" in the space indicated. For each facility, include its EPA Identification Number, name, and address.]

The firm identified above is the owner or operator of the following facilities for which liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences

is being demonstrated through the financial test specified in LAC 33:V.Chapter 37 or 43.

The firm identified above guarantees, through the guarantee specified in LAC 33:V.Chapter 37 or 43, liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences at the following facilities owned or operated by the following: _____. The firm identified above is [insert one or more: (1) the direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee _____; or (3) engaged in the following substantial business relationship with the owner or operator, and receiving the following value in consideration of this guarantee [_____]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter].

[If you are using the financial test to demonstrate coverage of both liability and closure and post-closure care, fill in the following five paragraphs regarding facilities and associated closure and post-closure cost estimates. If there are no facilities that belong in a particular paragraph, write "none" in the space indicated. For each facility, include its EPA Identification Number, name, address, and current closure and/or post-closure cost estimates. Identify each cost estimate as to whether it is for closure or post-closure care.]

1. The firm identified above owns or operates the following facilities for which financial assurance for closure or post-closure care or liability coverage is demonstrated through the financial test specified in LAC 33:V.Chapters 37 and 43. The current closure and/or post-closure cost estimates covered by the test are shown for each facility:
2. The firm identified above guarantees, through the guarantee specified in LAC 33:V.Chapters 37 and 43, the closure and post-closure care or liability coverage of the following facilities owned or operated by the guaranteed party. The current cost estimates for the closure or post-closure care so guaranteed are shown for each facility: _____
3. In states other than Louisiana, this firm is demonstrating financial assurance for the closure or post-closure care of the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in LAC 33:V.Chapters 37 and 43. The current closure and/or post-closure

cost estimates covered by such a test are shown for each facility: _____

4. The firm identified above owns or operates the following hazardous waste management facilities for which financial assurance for closure or, if a disposal facility, post-closure care, is not demonstrated either to the U.S. Environmental Protection Agency or to a state through the financial test or any other financial assurance mechanism in LAC 33:V.Chapters 37 and 43 or equivalent or substantially equivalent state mechanisms. The current closure and/or post-closure cost estimates not covered by such financial assurance are shown for each facility: _____
5. This firm is the owner or operator or guarantor of the following UIC facilities for which financial assurance for plugging and abandonment is required under the applicable regulations of the Louisiana Department of Natural Resources and is assured through a financial test. The current closure cost estimates as required by LDNR are shown for each facility: _____

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed year, ended [date].

[Fill in Part A if you are using the financial test to demonstrate coverage only for the liability requirements under LAC 33:V.Chapters 37 and 43.]

PART A. LIABILITY COVERAGE FOR SUDDEN AND NONSUDDEN OCCURRENCES

[Fill in Alternative I if the first criteria of LAC 33:V.3707.F.1 or 4411.F.1 are used. Fill in Alternative II if the second criteria of LAC 33:V.3707.F.1 or 4411.F.1 are used.]

ALTERNATIVE I

1. Amount of annual aggregate liability coverage to be demonstrated: \$ _____
- *2. Current assets: \$ _____

- *3. Current liabilities: \$ _____
- *4. Net working capital (line 2 minus line 3):\$ _____
- *5. Tangible net worth: \$ _____
- *6. Total assets in the U.S. (required only if less than 90 percent of the firm's assets are located in the U.S.):\$ _____

- | | YES | NO |
|--|-------|-------|
| 7. Is line 5 at least \$10 million? | _____ | _____ |
| *8. Is line 4 at least six times line 1? | _____ | _____ |
| 9. Is line 5 at least six times line 1? | _____ | _____ |
| 10. Are at least 90 percent of assets located in the U.S.? If not, complete line 11. | _____ | _____ |
| 11. Is line 6 at least six times line 1? | _____ | _____ |

ALTERNATIVE II

1. Amount of annual aggregate liability coverage to be demonstrated: \$ _____
2. Current bond rating of most recent issuance and name of rating service: _____
3. Date of issuance of bond: _____
4. Date of maturity of bond: _____
- *5. Tangible net worth: \$ _____
- *6. Total assets in U.S. (required only if less than 90 percent of assets are located in the U.S.): \$ _____

- | | YES | NO |
|---|-------|-------|
| 7. Is line 5 at least \$10 million? | _____ | _____ |
| *8. Is line 5 at least six times line 1? | _____ | _____ |
| 9. Are at least 90 percent of assets located in the U.S.? If not, complete line 10. | _____ | _____ |
| 10. Is line 6 at least six times line 1? | _____ | _____ |

[Fill in Part B if you are using the financial test to demonstrate assurance of both liability coverage and closure or post-closure care.]

PART B. CLOSURE OR POST-CLOSURE CARE AND LIABILITY COVERAGE

[Fill in Alternative I if the first criteria of LAC 33:V.3707.F.1, 3711.F.1, and 3715.F.1 or if the first criteria of LAC 33:V.4403.E.1 or 4407.E.1 and 4411.F.1 are used. Fill in Alternative II if the second criteria of LAC 33:V.3707.F.1, 3711.F.1, and 3715.F.1 or if the second criteria of LAC 33:V.4403.E.1 or 4407.E.1 and 4411.F.1 are used.]

ALTERNATIVE I

1. Sum of current closure and post-closure cost estimates (total of all cost estimates listed above): \$_____
2. Amount of annual aggregate liability coverage to be demonstrated: \$_____
3. Sum of lines 1 and 2: \$_____
- *4. Total liabilities (if any portion of your closure or post-closure cost estimates is included in your total liabilities, you may deduct that portion from this line and add that amount to lines 5 and 6): \$_____
- *5. Tangible net worth: \$_____
- *6. Net worth: \$_____
- *7. Current assets: \$_____
- *8. Current liabilities: \$_____
9. Net working capital (line 7 minus line 8):\$_____
10. The sum of net income plus depreciation, depletion, and amortization: \$_____
- *11. Total assets in the U.S. (required only if less than 90 percent of firm's assets are located in the U.S.): \$_____
12. Is line 5 at least \$10 million?

YES	NO
_____	_____

13. Is line 5 at least six times line 3? _____
14. Is line 9 at least six times line 3? _____
- *15. Are at least 90 percent of assets located in the U.S.? If not, complete line 16. _____
16. Is line 11 at least six times line 3? _____
17. Is line 4 divided by line 6 less than 2.0? _____
18. Is line 10 divided by line 4 greater than 0.1? _____
19. Is line 7 divided by line 8 greater than 1.5? _____

ALTERNATIVE II

1. Sum of current closure and post-closure cost estimates (total of all cost estimates listed above): \$_____
2. Amount of annual aggregate liability coverage to be demonstrated: \$_____
3. Sum of lines 1 and 2: \$_____
4. Current bond rating of most recent issuance and name of rating service: _____
5. Date of issuance of bond: _____
6. Date of maturity of bond: _____
- *7. Tangible net worth (if any portion of the closure or post-closure cost estimates is included in "total liabilities" on your financial statements you may add that portion to this line): \$_____
- *8. Total assets in the U.S. (required only if less than 90 percent of assets are located in the U.S.): \$_____
- | | YES | NO |
|---|-------|-------|
| 9. Is line 7 at least \$10 million? | _____ | _____ |
| *10. Is line 7 at least six times line 3? | _____ | _____ |

11. Are at least 90 percent of assets located in the U.S.? If not, complete line 12. _____

12. Is line 8 at least six times line 3? _____

I hereby certify that the wording of this letter is identical to the wording specified in LAC 33:V.3719.G as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

H. Corporate Guarantees

1. A corporate guarantee, as specified in LAC 33:V.3707.F or 3711.F or 4403.E or 4407.E must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the bracket deleted.

Response

Exide acknowledges this requirement; however this section regarding corporate guarantees does not apply as Exide maintains a surety bond and certificate of insurance.

CORPORATE GUARANTEE FOR CLOSURE OR POST-CLOSURE CARE

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of the State of [insert name of State], herein referred to as guarantor, to the Louisiana Department of Environmental Quality, obligee, on behalf of [owner or operator] of [business address], which is [one of the following: "our subsidiary"; "a subsidiary of (name and address of common parent corporation), of which guarantor is a subsidiary"; or "an entity with which guarantor has a substantial business relationship, as defined in LAC 33:V.3703.H or 4399"].

Recitals:

- a. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for

guarantors as specified in LAC 33:V.3707.F, 3711.F, 4403.E, and 4407.E.

- b. [Owner or operator] owns or operates the following hazardous waste management facility(ies) covered by this guarantee: [List for each facility: EPA Identification Number, name, and address. Indicate for each whether guarantee is for closure, post-closure care, or both.]
- c. "Closure plans" and "post-closure plans" as used below refer to the plans maintained as required by LAC 33:V.Chapters 35 and 43 for the closure and post-closure care of facilities as identified above.
- d. For value received from [owner or operator], guarantor guarantees to the Louisiana Department of Environmental Quality that in the event that [owner or operator] fails to perform [insert "closure," "post-closure care," or "closure and post-closure care"] of the above facility(ies) in accordance with the closure or post-closure plans and other permit or interim status requirements whenever required to do so, the guarantor shall do so or establish a trust fund as specified in LAC 33:V.Chapter 37 or 43, as applicable, in the name of [owner or operator] in the amount of the current closure or post-closure cost estimates as specified in LAC 33:V.Chapter 37 or 43.
- e. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the administrative authority and to [owner or operator] that he intends to provide alternative financial assurance as specified in LAC 33:V.Chapter 37 or 43, as applicable, in the name of [owner or operator]. Within 120 days after the end of such fiscal year, the guarantor shall establish such financial assurance unless [owner or operator] has done so.
- f. The guarantor agrees to notify the administrative authority by certified mail, of a voluntary or involuntary proceeding under Title 11 (bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.
- g. Guarantor agrees that within 30 days after being notified by the administrative authority of a determination that

guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor of closure or post-closure care, he shall establish alternate financial assurance as specified in LAC 33:V.Chapter 37 or 43, as applicable, in the name of [owner or operator] unless [owner or operator] has done so.

- h. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the closure or post-closure plan, amendment or modification of the permit, the extension or reduction of the time of performance of closure or post-closure, or any other modification or alteration of an obligation of the owner or operator pursuant to LAC 33:V.Chapter 37 or 43.
- i. Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable financial assurance requirements of LAC 33:V.Chapter 37 or 43 for the above-listed facilities, except as provided in this Paragraph of this agreement. [Insert the following language if the guarantor is a direct or higher-tier corporate parent, or a firm whose parent corporation is also the parent corporation of the owner or operator]: Guarantor may cancel this guarantee by sending notice by certified mail to the administrative authority and to [owner or operator], provided that this guarantee may not be canceled unless and until [the owner or operator] obtains, and the administrative authority approve(s), alternate closure and/or post-closure care coverage complying with LAC 33:V.3707, 3711, 4403, and 4407.

[Insert the following language if the guarantor is a firm qualifying as a guarantor due to its "substantial business relationship" with its owner or operator]:

Guarantor may cancel this guarantee 120 days following the receipt of notification, through certified mail, by the administrative authority, and by the owner or operator.

- j. Guarantor agrees that if [owner or operator] fails to provide alternate financial assurance as specified in LAC 33:V.Chapter 37 or 43, as applicable, and obtain written approval of such assurance from the administrative authority within 90 days after a notice of cancellation by

the guarantor is received by the administrative authority from guarantor, guarantor shall provide such alternative financial assurance in the name of [owner or operator].

- k. Guarantor expressly waives notice of acceptance of this guarantee by the administrative authority or by [owner or operator]. Guarantor also expressly waives notice of amendments or modifications of the closure and/or post-closure plan and of amendments or modifications of the facility permit(s).

I hereby certify that the wording of this guarantee is identical to the wording specified in LAC 33:V.3719.H.1 as such regulations were constituted on the date first above written.

Effective dates: _____

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Thus sworn and signed before me on this the _____ day of _____, 20_____.

Notary Public

2. A guarantee, as specified in LAC 33:V.3715.G or 4411.G, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

GUARANTEE FOR LIABILITY COVERAGE

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of [if incorporated within the United States insert "the State of ____" and insert name of state; if incorporated outside the United States insert the name of the country in which incorporated, the principal place of business within the United States, and the name and address of the registered agent in the state of the principal place of business], herein referred to as guarantor. This guarantee is made on behalf of [owner or operator] of [business address], which is [one of the following: "our subsidiary"; "a subsidiary of (name and address of common parent corporation), of which guarantor is a subsidiary"; or "an entity with which guarantor has a substantial business relationship, as defined in LAC 33:V.3703 or 4399"], to any and all third parties who have sustained or may sustain bodily injury or property damage

caused by [sudden and/or non-sudden] accidental occurrences arising from operation of the facility(ies) covered by this guarantee.

Recitals

- a. **Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in LAC 33:V.3715.G and 4411.G.**
- b. **[Owner or operator] owns or operates the following hazardous waste management facility(ies) covered by this guarantee: [List for each facility: EPA identification number, name, and address; and if guarantor is incorporated outside the United States list the name and address of the guarantor's registered agent in each state and in Louisiana.] This corporate guarantee satisfies RCRA third-party liability requirements for [Insert "sudden" or "non-sudden" or "both sudden and non-sudden"] accidental occurrences in above-named owner or operator facilities for coverage in the amount of [Insert dollar amount] for each occurrence and [insert dollar amount] annual aggregate.**
- c. **For value received from [owner or operator], guarantor guarantees to any and all third parties who have sustained or may sustain bodily injury or property damage caused by [sudden and/or nonsudden] accidental occurrences arising from operations of the facility(ies) covered by this guarantee that in the event that [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by [sudden and/or nonsudden] accidental occurrences, arising from the operation of the above-named facilities, or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor will satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage identified above.**
- d. **Exclusions. This guarantee does not apply to:**
 - i. **Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to**

liability for damages that [insert owner or operator] would be obligated to pay in the absence of the contract or agreement.

ii. Any obligation of the owner or operator under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

iii. Bodily injury to:

(a). an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator]; or

(b). the spouse, child, parent, brother, or sister of that employee as a consequence of, or arising from, and in the course of, employment by [insert owner or operator].

This exclusion applies:

(i). whether [insert owner or operator] may be liable as an employer or in any other capacity; and

(ii). to any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in Subclauses (a) and (b).

iv. Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft.

v. Property damage to:

(a). any property owned, rented, or occupied by [insert owner or operator];

(b). premises that are sold, given away, or abandoned by [insert owner or operator] if the property damage arises out of any part of those premises;

- (c). property loaned to [insert owner or operator];
 - (d). personal property in the care, custody, or control of [insert owner or operator];
 - (e). that particular part of real property on which [insert owner or operator] or any contractors or subcontractors working directly or indirectly on behalf of [insert owner or operator] are performing operations, if the property damage arises out of these operations.
- e. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the administrative authority and to [owner or operator] that he intends to provide alternate liability coverage as specified in LAC 33:V.3715 and 4411, as applicable, in the name of [owner or operator]. Within 120 days after the end of such fiscal year, the guarantor shall establish such liability coverage unless [owner or operator] has done so.
- f. The guarantor agrees to notify the administrative authority by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.
- g. Guarantor agrees that within 30 days after being notified by the administrative authority of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor, he shall establish alternate liability coverage as specified in LAC 33:V.3715 or 4411 in the name of [owner or operator], unless [owner or operator] has done so.
- h. Guarantor reserves the right to modify this agreement to take into account amendment or modification of the liability requirements set by LAC:33:V.3715 and 4411, provided that such modification shall become effective only if the

administrative authority does not disapprove the modification within 30 days of receipt of notification of the modification.

- i. Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable requirements of LAC 33:V.3715 and 4411 for the above-listed facility(ies), except as provided in Subparagraph j of this agreement.**

- j. [Insert the following language if the guarantor is a direct or higher-tier corporate parent, or a firm whose parent corporation is also the parent corporation of the owner or operator]:**

Guarantor may terminate this guarantee by sending notice by certified mail to the administrative authority and to [owner or operator], provided that this guarantee may not be terminated unless and until the [owner or operator] obtains, and the administrative authority approves, alternate liability coverage complying with LAC 33:V.3715 and/or 4411.

[Insert the following language if the guarantor is a firm qualifying as a guarantor due to its "substantial business relationship" with the owner or operator]:

Guarantor may terminate this guarantee 120 days following receipt of notification, through certified mail, by the administrative authority and by [the owner or operator].

- k. Guarantor hereby expressly waives notice of acceptance of this guarantee by any party.**
- l. Guarantor agrees that this guarantee is in addition to and does not affect any other responsibility or liability of the guarantor with respect to the covered facilities.**
- m. The Guarantor shall satisfy a third-party liability claim only on receipt of one of the following documents.**

- i. **Certification from the Principal and the third-party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:**

CERTIFICATION OF VALID CLAIM

The undersigned, as parties [insert Principal] and [insert name and address of third-party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or non-sudden] accidental occurrence arising from operating [Principal's] hazardous waste treatment, storage, or disposal facility should be paid in the amount of \$[].

[Signatures]

Principal

[Notary]

[Date]

[Signatures]

Claimant(s)

[Notary]

[Date]

- ii. **A valid final court order establishing a judgement against the Principal for bodily injury or property damage caused by sudden or non-sudden accidental occurrences arising from the operation of the Principal's facility or group of facilities.**
- n. **In the event of combination of this guarantee with another mechanism to meet liability requirements, this guarantee will be considered [insert "primary" or "excess"] coverage.**

I hereby certify that the wording of this guarantee is identical to the wording specified in LAC 33:V.3719.H.2 as such regulations were constituted on the date shown immediately below.

[Name of guarantor]

[Authorized signature of guarantor]

[Name of person signing]

[Title of person signing]

[Signature of witness or notary]

I. Liability Endorsement

1. **A hazardous waste facility liability endorsement as required in LAC 33:V.3715 or 4411 must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:**

Response

Exide acknowledges this requirement; however this section regarding liability endorsement does not apply as Exide maintains a certificate of insurance.

**HAZARDOUS WASTE FACILITY
LIABILITY ENDORSEMENT**

- a. **This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering bodily injury and property damage in connection with the insured's obligation to demonstrate financial responsibility under LAC 33:V.3715.F or 4411. The coverage applies to [EPA Identification Number, name, and address for each facility] for [insert "sudden accidental occurrences," "non-sudden accidental occurrences," or "sudden and non-sudden accidental occurrences"; if coverage is for multiple facilities and the coverage is different for different facilities, indicate which facilities are insured for sudden accidental occurrences, which are insured for non-sudden accidental occurrences, and which are insured for both]. The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the insurer's liability], exclusive of legal defense costs.**
- b. **The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions of the policy inconsistent with Clauses i-v of this Subparagraph are hereby amended to conform with Clauses i-v.**

- i. **Bankruptcy or insolvency of the Insured shall not relieve the insurer of its obligations under the policy to which this endorsement is attached.**
 - ii. **The insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the Insured for any such payment made by the Insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in LAC 33:V.3715.F or 4411.**
 - iii. **Whenever requested by the administrative authority, the Insurer agrees to furnish to the administrative authority a signed duplicate original of the policy and all endorsements.**
 - iv. **Cancellation of this endorsement, whether by the Insurer, the Insured, a parent corporation providing insurance coverage for its subsidiary, or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of the hazardous waste management facility, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the administrative authority.**
 - v. **Any other termination of this endorsement will be effective only upon written notice and only after the expiration of thirty days after a copy of such written notice is received by the administrative authority.**
2. **Attached to and forming part of policy Number _____ issued by [name of Insurer], herein called the Insurer, of [address of Insurer] to [name of Insured] of [address] this ____ day of _____, 20__.**
 3. **I hereby certify that the wording of this endorsement is identical to the wording specified in LAC 33:V.3719.I as such regulation was constituted on the date first above written, and that the Insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states, and is authorized to conduct business in the State of Louisiana.**

[Signature of Authorized Representative of Insurer]
[Type name]
[Title, Authorized Representative of [Name of Insurer]]
[Address of Representative]

- J. **Certificate of Liability Insurance.** A certificate of liability insurance as required in LAC 33:V.3715 or 4411 must be worded as follows, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Response

Exide acknowledges this requirement and will comply.

**HAZARDOUS WASTE FACILITY CERTIFICATE OF
LIABILITY INSURANCE**

1. [Name of Insurer], (the "Insurer") of [address of Insurer] hereby certifies that it has issued liability insurance covering bodily injury and property damage to [name of insured], (the "insured"), of [address of insured] in connection with the insured's obligation to demonstrate financial responsibility under LAC 33:V.3715 or 4411. The coverage applies at [list EPA identification number, name, and address for each facility] for [insert "sudden accidental occurrences," "non-sudden accidental occurrences," or "sudden and non-sudden accidental occurrences"; if coverage is for multiple facilities and the coverage is different for different facilities, indicate which facilities are insured for sudden accidental occurrences, which are insured for non-sudden accidental occurrences, and which are insured for both]. The limits of liability are [insert the dollar amount of "each occurrence" and "annual aggregate" limits of the insurer's liability], exclusive of legal defense costs. The coverage is provided under policy number _____, issued on [date]. The effective date of said policy is [date].
2. The insurer further certifies the following with respect to the insurance described in Paragraph 1.
 - a. Bankruptcy or insolvency of the insured shall not relieve the insurer of its obligation under the policy.
 - b. The insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the insurer. This provision does not apply with respect

to that amount of any deductible for which coverage is demonstrated as specified in LAC 33:V.3715.F or 4411.

- c. Whenever requested by the administrative authority, the insurer agrees to furnish to the administrative authority a signed duplicate original of the policy and all endorsements.
- d. Cancellation of the insurance, whether by the insurer, the insured, a parent corporation providing insurance coverage for its subsidiary, or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of the hazardous waste management facility, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the administrative authority.
- e. Any other termination of the insurance will be effective only upon written notice and only after the expiration of 30 days after a copy of such written notice is received by the administrative authority.

I hereby certify that the wording of this instrument is identical to the wording specified in LAC 33:V.3719.J as such regulation was constituted on the date this certificate was issued, as indicated below, and that the insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess of surplus lines insurer, in one or more states, and is authorized to conduct insurance business in the state of Louisiana.

[Signature of authorized representative of insurer]
[Type name]
[Title], Authorized Representative of [Name of insurer]
[Address of Representative]
DATE OF ISSUANCE: _____

- K. Letter of Credit. A letter of credit, as specified in LAC 33:V.3715 or 4411, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

Response

Exide acknowledges this requirement; however this section regarding letter of credit does not apply as Exide maintains a surety bond and insurance certificate.

IRREVOCABLE STANDBY LETTER OF CREDIT

**Secretary
Louisiana Department of Environmental Quality
P.O. Box 82231
Baton Rouge, Louisiana 70884-2231**

Dear Sir or Madam:

We hereby establish our Irrevocable Standby Letter of Credit Number _____ in the favor of ["any and all third-party liability claimants" or insert name of trustee of the standby trust fund], at the request and for the account of [owner or operator's name and address] for third-party liability awards or settlements up to [in words] U.S. dollars \$_____ per occurrence and the annual aggregate amount of [in words] U.S. dollars, for sudden accidental occurrences and/or for third-party liability awards or settlements up to the amount of [in words] U.S. dollars \$_____ per occurrence, and the annual aggregate amount of [in words] U.S. dollars \$_____ for nonsudden accidental occurrences available upon presentation of a sight draft bearing reference to this Letter of Credit Number_____, and [Insert the following language if the letter of credit is being used without a standby trust fund:]

- 1. A signed certificate reading as follows:
CERTIFICATE OF VALID CLAIM**

The undersigned, as parties [insert principal] and [insert name and address of third-party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or non-sudden] accidental occurrence arising from operations of [principal's] hazardous waste treatment, storage, or disposal facility should be paid in the amount of \$_____. We hereby certify that the claim does not apply to any of the following:

- a. Bodily injury or property damage for which [insert principal] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert principal] would be obligated to pay in the absence of the contract or agreement.**

b. Any obligation of [insert principal] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

c. Bodily injury to:

i. an employee of [insert principal] arising from, and in the course of, employment by [insert principal]; or

ii. the spouse, child, parent, brother, or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert principal].

This exclusion applies:

(a). whether [insert principal] may be liable as an employer or in any other capacity; and

(b). to any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in Clause K.1.c.i or ii of this Section.

d. Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft.

e. Property damage to:

i. any property owned, rented, or occupied by [insert principal];

iii. premises that are sold, given away, or abandoned by [insert principal] if the property damage arises out of any part of those premises;

iii. property loaned to [insert principal];

iv. personal property in the care, custody, or control of [insert principal];

v. that particular part of real property on which [insert principal] or any contractors or subcontractors working directly or indirectly on behalf of [insert

principal] are performing operations, if the property damage arises out of these operations.

[Signatures]

Grantor

[Signatures]

Claimant(s)

2. Or, as an alternative to the Certificate of Valid Claim, a valid final court order establishing a judgment against the Grantor for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Grantor's facility or group of facilities.

This Letter of Credit is effective as of [date] and shall expire on [date at least one year later], but such expiration date shall be automatically extended for a period of [at least one year] on [date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify you, the administrative authority, and [owner's or operator's name] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date.

Whenever this Letter of Credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us.

Insert the following language if a standby trust fund is not being used: "In the event that this letter of credit is used in combination with another mechanism for liability coverage, this letter of credit shall be considered [insert "primary" or "excess" coverage]."

We certify that the wording of this letter of credit is identical to the wording specified in LAC 33:V.3719.K as such regulations were constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution [Date]]

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits published and copyrighted by the International Chamber of Commerce" or "the Uniform Commercial Code"].

- L. **Surety Bond.** A surety bond, as specified in LAC 33:V.3715 or 4411, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

Response

Exide acknowledges this section and will comply.

PAYMENT BOND

Surety Bond Number [insert number]

Parties [insert name and address of owner or operator], Principal, incorporated in [insert state of incorporation] of [insert city and state of principal place of business], and [insert name and address of Surety Company(ies)], surety company(ies), of [insert surety(les) place of business].

EPA identification number, name, and address for each facility guaranteed by this bond:

**Sudden AccidentalNon-sudden Accidental
OccurrencesOccurrences**

Penal Sum per Occurrence [insert amount] [insertamount]

Annual Aggregate [insert amount] [insertamount]

Purpose: This is an agreement between the surety(ies) and the Principal under which the Surety(ies), its (their) successors and assignees, agree to be responsible for the payment of claims against the principal for bodily injury and/or property damage to third parties caused by ["sudden" and/or "non-sudden"] accidental occurrences arising from operations of the facility or group of facilities in the sums prescribed herein, subject to the governing provisions and the following conditions.

1. Governing Provisions

- a. **Section 3004 of the Resource Conservation and Recovery Act of 1976, as amended.**
- b. **Rules and regulations of the U.S. Environmental Protection Agency (EPA), particularly 40 CFR 264.147 or 265.147 (if applicable).**

- c. Rules and regulations of the Louisiana Department of Environmental Quality, particularly LAC 33:V.3715 and 4411, as applicable.

2. Conditions

- a. The Principal is subject to the applicable governing provisions that require the Principal to have and maintain liability coverage for bodily injury and property damage to third parties caused by ["sudden" and/or "non-sudden"] accidental occurrences arising from operations of the facility or group of facilities. Such obligation does not apply to any of the following:
 - i. Bodily injury or property damage for which [insert principal] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert principal] would be obligated to pay in the absence of the contract or agreement.
 - ii. Any obligation of [insert principal] under a workers' compensation, disability benefits, or unemployment compensation law or similar law.
 - iii. Bodily injury to:
 - (a). an employee of [insert principal] arising from, and in the course of, employment by [insert principal]; or
 - (b). the spouse, child, parent, brother, or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert principal]. This exclusion applies:
 - (i). whether [insert principal] may be liable as an employer or in any other capacity; and
 - (ii). to any obligation to share damages with or repay another person who must pay damages because of the

injury to persons identified in Subclauses (a) and (b) above.

- iv. Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft.**
- v. Property damage to:**
 - (a). any property owned, rented, or occupied by [insert principal];**
 - (b). premises that are sold, given away, or abandoned by [insert Principal] if the property damage arises out of any part of those premises;**
 - (c). property loaned to [insert Principal];**
 - (d). personal property in the care, custody, or control of [insert Principal];**
 - (e). that particular part of real property on which [insert principal] or any contractors or subcontractors working directly or indirectly on behalf of [insert principal] are performing operations, if the property damage arises out of these operations.**
- b. This bond assures that the Principal will satisfy valid third-party liability claims, as described in Condition A.**
- c. If the Principal fails to satisfy a valid third-party liability claim, as described above, the Surety(ies) become(s) liable on this bond obligation.**
- d. The Surety(ies) shall satisfy a third-party liability claim only upon the receipt of one of the following documents.**
 - i. Certification from the Principal and the third-party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:**

CERTIFICATION OF VALID CLAIM

The undersigned, as parties [insert name of Principal] and [insert name and address of third-party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or non-sudden] accidental occurrence arising from operating [Principal's] hazardous waste treatment, storage, or disposal facility should be paid in the amount of \$[].

[Signature]

Principal

[Notary]

[Date]

[Signature(s)]

Claimant(s)

[Notary]

[Date]

- ii. A valid final court order establishing a judgement against the Principal for bodily injury or property damage caused by sudden or non-sudden accidental occurrences arising from the operation of the Principal's facility or group of facilities.
- e. In the event of combination of this bond with another mechanism for liability coverage, this bond will be considered [insert "primary" or "excess"] coverage.
- f. The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond. In no event shall the obligation of the Surety(ies) hereunder exceed the amount of said annual aggregate penal sum, provided that the Surety(ies) furnish(es) notice to the administrative authority forthwith of all claims filed and payments made by the Surety(ies) under this bond.
- g. The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and the administrative authority, provided, however, that cancellation shall not occur during the 120 days beginning

on the date of receipt of the notice of cancellation by the Principal and the administrative authority, as evidenced by the return receipt.

- h. The Principal may terminate this bond by sending written notice to the Surety(ies) and to the administrative authority.
- i. The Surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes, rules, and regulations and agree(s) that no such amendment shall in any way alleviate its (their) obligation on this bond.
- j. This bond is effective from [insert date] (12:01 a.m., standard time, at the address of the Principal as stated herein) and shall continue in force until terminated as described above.

In Witness Whereof, the Principal and Surety(ies) have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in LAC 33:V.3719, as such regulations were constituted on the date this bond was executed.

PRINCIPAL

[Signature(s)]

[Name(s)]

[Title(s)]

[Corporate Seal]

CORPORATE SURETY[IES]

[Name and address]

State of incorporation:

Liability Limit: \$

[Signature(s)]

[Name(s) and title(s)]

[Corporate seal]

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for surety above.]

Bond premium: \$

M. Trust Agreement

1. A trust agreement, as specified in LAC 33:V.3715 and 4411, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

Response

Exide acknowledges this requirement; however this section regarding trust agreements does not apply as Exide maintains a surety bond.

TRUST AGREEMENT

Trust Agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator] a [name of state] [Insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert, "incorporated in the state of ____ " or "a national bank"], the "Trustee."

WHEREAS, the United States Environmental Protection Agency, "EPA," an agency of the United States Government, has established certain regulations applicable to the Grantor, requiring that an owner or operator of a hazardous waste management facility or group of facilities must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental and/or nonsudden accidental occurrences arising from operations of the facility or group of facilities.

WHEREAS, the Grantor has elected to establish a trust to assure all or part of such financial responsibility for the facilities identified herein.

WHEREAS, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this Agreement, and the Trustee is willing to act as trustee.

NOW, THEREFORE, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

- a. The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

- b. The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of Facilities

This agreement pertains to the facilities identified on attached Schedule A [on Schedule A, for each facility list the EPA Identification Number, name, and address of the facility(ies) and the amount of liability coverage, or portions thereof, if more than one instrument affords combined coverage as demonstrated by this Agreement].

Section 3. Establishment of Fund

The Grantor and the Trustee hereby establish a trust fund, hereinafter the "Fund," for the benefit of any and all third parties injured or damaged by [sudden and/or nonsudden] accidental occurrences arising from operation of the facility(ies) covered by this guarantee, in the amounts of _____ [up to \$5 million] per occurrence and _____ [up to \$10 million] annual aggregate for sudden accidental occurrences, exclusive of legal defense costs and _____ [up to \$3 million] per occurrence and _____ [up to \$6 million] annual aggregate for nonsudden occurrences exclusive of legal defense costs, except that the Fund is not established for the benefit of third parties for the following:

- a. Bodily injury or property damage for which [insert Grantor] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert Grantor] would be obligated to pay in the absence of the contract or agreement.
- b. Any obligation of [insert Grantor] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.
- c. Bodily injury to:
 - ii. an employee of [insert Grantor] arising from, and in the course of, employment by [insert Grantor]; or
 - ii. the spouse, child, parent, brother, or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert Grantor].

This exclusion applies:

- (a). whether [insert Grantor] may be liable as an employer or in any other capacity; and**
 - (b). to any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in Clauses i and ii above.**
- d. Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft.**
- e. Property damage to:**
 - i. any property owned, rented, or occupied by [insert Grantor];**
 - ii. premises that are sold, given away, or abandoned by [insert Grantor] if the property damage arises out of any part of those premises;**
 - iii. property loaned to [insert Grantor];**
 - iv. personal property in the care, custody, or control of [insert Grantor];**
 - vi. that particular part of real property on which [insert Grantor] or any contractors or subcontractors working directly or indirectly on behalf of [insert Grantor] are performing operations, if the property damage arises out of these operations.**

In the event of combination with another mechanism for liability coverage, the fund shall be considered [insert "primary" or "excess"] coverage.

The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held

by the Trustee, IN TRUST as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by EPA.

Section 4. Payment for Bodily Injury or Property Damage

The Trustee shall satisfy a third-party liability claim by making payments from the Fund only upon receipt of one of the following documents.

- a. **Certification from the Grantor and the third-party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:**

CERTIFICATION OF VALID CLAIM

The undersigned, as parties [insert Grantor] and [insert name and address of third-party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or non-sudden] accidental occurrence arising from operating [Grantor's] hazardous waste treatment, storage, or disposal facility should be paid in the amount of \$[].

[Signatures]

Grantor

[Signatures]

Claimant(s)

- b. **A valid final court order establishing a judgement against the Grantor for bodily injury or property damage caused by sudden or non-sudden accidental occurrences arising from the operation of the Grantor's facility or group of facilities.**

Section 5. Payments Comprising the Fund.

Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management

The Trustee shall invest and reinvest the principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstance then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims, except that:

- a. securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2.(a), shall not be acquired or held unless they are securities or other obligations of the federal or a state government;**
- b. the Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and**
- c. the Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.**

Section 7. Commingling and Investment

The Trustee is expressly authorized in its discretion:

- a. to transfer from time to time any or all of the assets of the Fund to any common commingled or collective trust fund created by the Trustee in which the fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and**
- b. to purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 81a-1 et seq., including one which**

may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee

Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the trustee is expressly authorized and empowered:

- a. To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition.**
- b. To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted.**
- c. To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund.**
- d. To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or**

in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government.

- e. To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses

All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the fund.

Section 10. Annual Valuations

The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the administrative authority a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the administrative authority shall constitute a conclusively binding assent by the Grantor barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel

The Trustee may from time to time consult with counsel, who may be counsel to the Grantor with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation

The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the administrative authority, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee

All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendments to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the administrative authority to the Trustee shall be in writing, signed by the administrative authority, or his or her designee, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the grantor or the administrative authority hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the administrative authority, except as provided for herein.

Section 15. Notice of Nonpayment

If a payment for bodily injury or property damage is made under Section 4 of this trust, the Trustee shall notify the Grantor of such payment and the amount(s) thereof within five working days. The Grantor shall, on or before the anniversary date of the establishment of the Fund following such notice, either make payments to the Trustee in amounts sufficient to cause the trust to return to its value immediately prior to the payment of claims under Section 4, or shall provide written proof to the Trustee that other financial assurance for liability coverage has been obtained equalling the amount necessary to return the trust to its value prior to the payment of claims. If the Grantor does not either make payments to the Trustee or provide the Trustee with such proof, the Trustee shall within 10 working days after the anniversary date of the establishment of the Fund provide a written notice of nonpayment to the administrative authority.

Section 16. Amendment of Agreement

This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the administrative authority, or by the Trustee and the administrative authority if the Grantor ceases to exist.

Section 17. Irrevocability and Termination

Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the administrative authority, or by the Trustee and the administrative authority, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

The administrative authority will agree to termination of the Trust when the owner or operator substitutes alternate financial assurance as specified in LAC 33:V.Chapter 37 or 44.

Section 18. Immunity and Indemnification

The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the administrative authority issued in accordance

with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law

This Agreement shall be administered, construed, and enforced according to the laws of the State of Louisiana.

Section 20. Interpretation

As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in LAC 33:V.3719 as such regulations were constituted on the date first above written.

[Signature of Grantor]

[Title]

Attest:

[Title]

[Seal]

[Signature of Trustee]

Attest:

[Title]

[Seal]

2. The following is an example of the certification of acknowledgement which must accompany the trust agreement for a trust fund as specified in LAC 33:V.3715 or 4411.

State of Louisiana

Parish of

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say

that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that she/he signed her/his name thereto by like order.

Witness:

THUS DONE AND SIGNED before me this _____ day of _____, in

NOTARY PUBLIC

N. Standby Trust Agreement

1. A standby trust agreement, as specified in LAC 33:V.3715.H. or 4411.H, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

STANDBY TRUST AGREEMENT

Trust Agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator] a [name of a State] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert, "incorporated in the State of _____" or "a national bank"], the "Trustee."

WHEREAS, the United States Environmental Protection Agency, "EPA," an agency of the United States Government, has established certain regulations applicable to the Grantor, requiring that an owner or operator of a hazardous waste management facility or group of facilities must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental and/or non-sudden accidental occurrences arising from operations of the facility or group of facilities.

WHEREAS, the Grantor has elected to establish a standby trust into which the proceeds from a letter of credit may be deposited

to assume all or part of such financial responsibility for the facilities identified herein.

WHEREAS, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the trustee is willing to act as trustee.

NOW, THEREFORE, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

- a. The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.
- b. The term "Trustee" means the trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of Facilities

This agreement pertains to the facilities identified on attached Schedule A [on Schedule A, for each facility list the EPA identification number, name, and address of the facility(ies) and the amount of liability coverage, or portions thereof, if more than one instrument affords combined coverage as demonstrated by this Agreement].

Section 3. Establishment of Fund

The Grantor and the Trustee hereby establish a standby trust fund, hereafter the "Fund," for the benefit of any and all third parties injured or damaged by [sudden and/or non-sudden] accidental occurrences arising from operation of the facility(ies) covered by this guarantee, in the amounts of _____ [up to \$1 million] per occurrence and _____ [up to \$2 million] annual aggregate for sudden accidental occurrences, and _____ [up to \$3 million] per occurrence and _____ [up to \$6 million] annual aggregate for non-sudden occurrences, except that the Fund is not established for the benefit of third parties for the following:

- a. Bodily injury or property damage for which [insert Grantor] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that

[insert Grantor] would be obligated to pay in the absence of the contract or agreement.

b. Any obligation of [insert Grantor] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

c. Bodily injury to:

- i. an employee of [insert Grantor] arising from, and in the course of, employment by [insert Grantor]; or**
- ii. the spouse, child, parent, brother, or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert Grantor].**

This exclusion applies:

- (a). whether [insert Grantor] may be liable as an employer or in any other capacity, and**
- (b). to any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in Clauses i and ii above.**

d. Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft.

e. Property damage to:

- i. any property owned, rented, or occupied by [insert Grantor];**
- ii. premises that are sold, given away, or abandoned by [insert Grantor] if the property damage arises out of any part of those premises;**
- iii. property loaned to [insert Grantor];**
- iv. personal property in the care, custody, or control of [insert Grantor];**
- v. that particular part of real property on which [insert Grantor] or any contractors or subcontractors working directly or indirectly on behalf of [insert**

Grantor] are performing operations, if the property damage arises out of these operations.

In the event of combination with another mechanism for liability coverage, the fund shall be considered [insert "primary" or "excess"] coverage.

The Fund is established initially as consisting of the proceeds of the letter of credit deposited into the Fund. Such proceeds and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by EPA.

Section 4. Payment for Bodily Injury or Property Damage

The Trustee shall satisfy a third-party liability claim by drawing on the letter of credit described in Schedule B and by making payments from the Fund only upon receipt of one of the following documents:

- a. Certification from the Grantor and the third-party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:**

CERTIFICATION OF VALID CLAIM

The undersigned, as parties [insert Grantor] and [insert name and address of third-party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or non-sudden] accidental occurrence arising from operating [Grantor's] hazardous waste treatment, storage, or disposal facility should be paid in the amount of \$[_____].

**[Signatures]
Grantor**

[Signatures]
Claimant(s)

- b. A valid final court order establishing a judgement against the Grantor for bodily injury or property damage caused by sudden or non-sudden accidental occurrences arising from the operation of the Grantor's facility or group of facilities.**

Section 5. Payments Comprising the Fund

Payments made to the Trustee for the Fund shall consist of the proceeds from the letter of credit drawn upon by the Trustee in accordance with the requirements of LAC 33:V.3719.K and Section 4 of this Agreement.

Section 6. Trustee Management

The Trustee shall invest and reinvest the principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims, except that:

- a. securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the federal or a state government;**
- b. the Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or a state government; and**
- c. the Trustee is authorized to hold cash awaiting investment or distribution uninvested for a**

reasonable time and without liability for payment of interest thereon.

Section 7. Commingling and Investment

The Trustee is expressly authorized in its discretion:

- a. to transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and**
- b. to purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.**

Section 8. Express Powers of Trustee

Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, and Trustee is expressly authorized and empowered:

- a. To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency or any such sale or other disposition.**
- b. To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted.**
- c. To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit**

or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited herein by another person, or to deposit or arrange for the deposit of any securities issued by the United States government, or any agency or instrumentality thereof, with a Federal Reserve Bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund.

- d. To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government.
- d. To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses

All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements to the Trustee shall be paid from the Fund.

Section 10. Advice of Counsel

The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 11. Trustee Compensation

The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 12. Successor Trustee

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the administrative authority, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 13. Instructions to the Trustee

All orders, requests, certifications of valid claims, and instructions to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendments to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the administrative authority hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the administrative authority, except as provided for herein.

Section 14. Amendment of Agreement

This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the administrative authority if the grantor ceases to exist.

Section 15. Irrevocability and Termination

Subject to the right of the parties to amend this Agreement as provided in Section 14, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the administrative authority, or by the Trustee and the administrative authority, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be paid to the grantor.

The administrative authority will agree to termination of the Trust when the owner or operator substitutes alternative financial assurances as specified in LAC 33:V.Chapter 37 or 44.

Section 16. Immunity and Indemnification

The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor and the administrative authority issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 17. Choice of Law

This Agreement shall be administered, construed, and enforced according to the laws of the State of Louisiana.

Section 18. Interpretation

As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation of the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in LAC 33:V.3719.N as such regulations were constituted on the date first above written.

[Signature of Grantor]

[Title]

Attest:

[Title]

[Seal]

[Signature of Trustee]

Attest:

[Title]

[Seal]

3. The following is an example of the certification of acknowledgement which must accompany the trust agreement for a standby trust fund as specified in LAC 33:V.3715.H or 4411.H.

State of Louisiana

Parish of

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

Witness:

THUS DONE AND SIGNED before me this _____ day of _____, _____, in _____.

NOTARY PUBLIC



CHAPTER 38

UNIVERSAL WASTES

Title 33
ENVIRONMENTAL QUALITY
Part V. Hazardous Waste and Hazardous Materials

Chapter 38. Universal Wastes

Subchapter A. General

§3801. Scope and Applicability

- A. This Chapter establishes requirements for managing batteries as described in LAC 33:V.3803, pesticides as described in LAC 33:V.3805, thermostats as described in LAC 33:V.3807, lamps as described in LAC 33:V.3809, and antifreeze as described in LAC 33:V.3811. This Chapter provides an alternative set of management standards in lieu of regulations under LAC 33:V.Subpart 1.**

Response

Exide reclaims and recycles spent lead-acid batteries in accordance with Chapter 41; therefore this Chapter does not apply to the lead-acid batteries. Exide does, on occasion, receive nickel-cadmium batteries mixed with loads of lead-acid batteries. The nickel-cadmium batteries are separated and stored in a trailer at the Truck/Trailer Storage Area until a load has accumulated for off-site disposal. The nickel-cadmium batteries are regulated by this Chapter. Exide does not manage pesticides, thermostats, lamps, and antifreeze; therefore the requirements of those sections do not apply.

- B. Persons managing household wastes that are exempt under LAC 33:V.105.D.2.a and are also of the same type as the universal wastes as defined in this Chapter may, at their option, manage these wastes under the requirements of this Chapter.**

Response

Exide does not manage exempt household wastes; therefore this section does not apply.

- C. **Conditionally exempt small quantity generator wastes that are regulated under LAC 33:V.108 and are also of the same type as the universal wastes defined in LAC 33:V.3813 may, at the generator's option, manage these wastes under the requirements of this Chapter.**

Response

Exide is not an exempt small quantity generator; therefore this section does not apply.

- D. **Persons who commingle the wastes described in Subsections B and C of this Section, together with universal waste regulated under this Chapter, must manage the commingled waste under the requirements of this Chapter.**

Response

Exide acknowledges this requirement and will comply.

§3803. Applicability—Batteries

A. Batteries Covered under This Chapter

1. **The requirements of this Chapter apply to persons managing batteries, as described in LAC 33:V.3813, except those listed in Subsection B of this Section.**

Response

The Baton Rouge Smelter stores, reclaims and recycles spent lead-acid batteries in accordance with Chapter 41; therefore the requirements of this Chapter do not apply. Exide does, on occasion, receive nickel-cadmium batteries mixed with loads of lead-acid batteries. The nickel-cadmium batteries are separated and stored in a trailer at the Truck/Trailer Storage Area until a load has accumulated for off-site disposal. The nickel-cadmium batteries are regulated by this Chapter.

2. **Spent lead-acid batteries which are not managed under LAC 33:V.Chapter 41 are subject to management under this Chapter.**

Response

Exide acknowledges this requirement and will comply; however Exide expects that all spent lead-acid batteries will be recycled in accordance with Chapter 41 and this chapter will not apply. The nickel-cadmium batteries segregated for off-site disposal are regulated by this Chapter.

B. Batteries Not Covered under This Chapter. The requirements of this Chapter do not apply to persons managing the following batteries:

1. **spent lead-acid batteries that are managed under LAC 33:V.Chapter 41;**

Response

Exide manages spent lead-acid batteries in accordance with LAC 33:V.Chapter 41; therefore this chapter does not apply to those batteries. The nickel-cadmium batteries segregated for off-site disposal are regulated by this Chapter.

2. **batteries, as described in LAC 33:V.3813, that are not yet wastes under LAC 33:V.4901, including those that do not meet the criteria for waste generation in Subsection C of this Section; and**

Response

Exide manages spent lead-acid batteries in accordance with LAC 33:V.Chapter 41; therefore this chapter does not apply those batteries. The nickel-cadmium batteries segregated for off-site disposal are regulated by this Chapter.

3. **batteries, as described in this Chapter, that are not hazardous waste. A battery is a hazardous waste if it exhibits one or more of the characteristics identified in LAC 33:V.4903.**

Response

Exide manages spent lead-acid batteries in accordance with LAC 33:V.Chapter 41; therefore this chapter does not apply to those batteries. The nickel-cadmium batteries segregated for off-site disposal are regulated by this Chapter.

C. Generation of Waste Batteries

1. **A used battery becomes a waste on the date it is discarded (e.g., when sent for reclamation).**

Response

Exide acknowledges this requirement and will comply.

2. **An unused battery becomes a waste on the date the handler decides to discard it.**

Response

Exide acknowledges this requirement and will comply.

§3805. Applicability—Pesticides

- A. **Pesticides Covered under This Chapter. The requirements of this Section apply to persons managing pesticides, as described in LAC 33:V.3813, meeting the following conditions, except those listed in Subsection B of this Section:**

Response

Exide does not manage pesticides; therefore this section does not apply.

1. **recalled pesticides that are:**
 - a. **stocks of a suspended and canceled pesticide that are part of a voluntary or mandatory recall under FIFRA Section 19(b), including, but not limited to those owned by the registrant responsible for conducting the recall; or**
 - b. **stocks of a suspended or canceled pesticide, or a pesticide that is not in compliance with FIFRA, that are part of a voluntary recall by the registrant;**

2. **stocks of other unused pesticide products that are collected and managed as part of a waste pesticide collection program.**

B. Pesticides Not Covered under This Chapter. The requirements of this Chapter do not apply to persons managing the following pesticides:

1. **recalled pesticides described in Paragraph A.1 of this Section, and unused pesticide products described in Paragraph A.2 of this Section, that are managed by farmers in compliance with LAC 33:V.1101.D (LAC 33:V.1101.D addresses pesticides disposed of on the farmer's own farm in a manner consistent with the disposal instructions on the pesticide label, providing the container is triple rinsed in accordance with the definition of *empty container* under LAC 33:V.109);**
2. **pesticides not meeting the conditions set forth in Subsection A of this Section. These pesticides must be managed in compliance with the hazardous waste regulations in LAC 33:V.Subpart 1;**
3. **pesticides that are not wastes under Subsection C of this Section, including those that do not meet the criteria for waste generation in Subsection C of this Section or those that are not wastes as described in Subsection D of this Section; and**
4. **pesticides that are not hazardous waste. A pesticide is a hazardous waste if it is listed in LAC 33:V.4901 or if it exhibits one or more of the characteristics identified in LAC 33:V.4903.**

C. When a Pesticide Becomes a Waste

1. **A recalled pesticide described in Subsection A of this Section becomes a waste on the first date on which both of the following conditions apply:**
 - a. **the generator of the recalled pesticide agrees to participate in the recall; and**

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§3807. Applicability—Mercury Thermostats

- A. Thermostats Covered under This Chapter.** The requirements of this Chapter apply to persons managing thermostats, as described in LAC 33:V.3813, except those listed in Subsection B of this Section.

Response

Exide does not manage mercury thermostats; therefore this section does not apply.

- B. Thermostats Not Covered under This Chapter.** The requirements of this Chapter do not apply to persons managing the following thermostats:

1. thermostats that are not yet wastes under LAC 33:V.Chapter 49, Subsection C of this Section describes when thermostats become wastes; and
2. thermostats that are not hazardous waste. A thermostat is a hazardous waste if it exhibits one or more of the characteristics identified in LAC 33:V.4903.

- C. Generation of Waste Thermostats**

1. A used thermostat becomes a waste on the date it is discarded (i.e., sent for reclamation).
2. An unused thermostat becomes a waste on the date the handler decides to discard it.

§3809. Applicability—Lamps

- A. Lamps Covered under This Chapter.** The requirements for this Chapter apply to persons managing lamps as described in LAC 33:V.3813, except those listed in Subsection B of this Section.

Response

Exide does not manage lamps; therefore this section does not apply.

B. Lamps Not Covered under This Chapter. The requirements of this Chapter do not apply to persons managing the following lamps:

- 1. lamps that are not yet wastes under LAC 33:V.4901 as provided in Subsection C of this Section; and**
- 2. lamps that are not hazardous waste. A lamp is a hazardous waste if it exhibits one or more of the characteristics identified in LAC 33:V.4903.**

C. Generation of Waste Lamps

- 1. A used lamp becomes a waste on the date it is discarded.**
- 2. An unused lamp becomes a waste on the date the handler decides to discard it.**

§3811. Applicability—Antifreeze

A. Antifreeze Covered under This Chapter. The requirements for this Chapter apply to persons managing antifreeze as described in LAC 33:V.3813, except those listed in Subsection B of this Section.

Response

Exide does not manage antifreeze; therefore this section does not apply.

B. Antifreeze Not Covered under This Chapter. The requirements of this Chapter do not apply to persons managing the following antifreeze:

- 1. antifreeze, as described in LAC 33:V.3813, that is not yet a waste under LAC 33:V.4901, including those that do not meet the criteria for waste generation in Subsection C of this Section; and**

2. antifreeze, as described in this Chapter, that is not yet a hazardous waste. Antifreeze is a hazardous waste if it exhibits one or more of the characteristics identified in LAC 33:V.4903.

C. Generation of Waste Antifreeze

1. Used or unused antifreeze becomes a waste on the date it is discarded (e.g., when sent for reclamation).
2. Waste antifreeze is a hazardous waste if it exhibits one or more of the characteristics identified in LAC 33:V.4903.

§3813. Definitions

Antifreeze—an ethylene glycol based mixture that lowers the freezing point of water and is used as an engine coolant.

Battery—a device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections (electrical and mechanical) as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.

Destination Facility—a facility that treats, disposes of, or recycles a particular category of universal waste, except those management activities described in LAC 33:V.3821.A and C and 3843.A and C. A facility at which a particular category of universal waste is only accumulated, is not a destination facility for purposes of managing that category of universal waste.

FIFRA—The Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136-136y).

Generator—any person, by site, whose act or process produces hazardous waste identified or listed in LAC 33:V.Chapter 49 or whose act first causes a hazardous waste to become subject to regulation.

Lamp (also referred to as **Universal Waste Lamp**)—the bulb or tube portion of an electric lighting device. A lamp is specifically designed to produce radiant energy, most often in the ultraviolet, visible, and infra-red regions of the electromagnetic spectrum. Examples of common universal waste electric lamps include, but are not limited to, fluorescent, high intensity discharge, neon, mercury vapor, high pressure sodium, and metal halide lamps.

Large Quantity Handler of Universal Waste—a universal waste handler (as defined in this Section) who accumulates 5,000 kilograms or more total of universal waste (batteries, pesticides, thermostats, lamps, or antifreeze, calculated collectively) at any time. This designation as a large quantity handler of universal waste is retained through the end of the calendar year in which 5,000 kilograms or more total of universal waste is accumulated.

Mercury-Containing Lamp—an electric lamp in which mercury is purposely introduced by the manufacturer for the operation of the lamp.

On-Site—the same or geographically contiguous property which may be divided by public or private right-of-way, provided that the entrance and exit between the properties is at a crossroads intersection, and access is by crossing as opposed to going along the right of way. Noncontiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access, are also considered on-site property.

Pesticide—any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, other than any article that:

1. is a new animal drug under FFDCA Section 201(w); or
2. is an animal drug that has been determined by regulation of the secretary of Health and Human Services not to be a new animal drug; or
3. is an animal feed under FFDCA Section 201(x) that bears or contains any substances described by Paragraph 1 or 2 of this Subsection.

Small Quantity Handler of Universal Waste—a universal waste handler (as defined in this Section) who does not accumulate 5,000 kilograms or more

total of universal waste (batteries, pesticides, thermostats, lamps, or antifreeze, calculated collectively) at any time.

Thermostat—a temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element, and mercury-containing ampules that have been removed from these temperature control devices in compliance with the requirements of LAC 33:V.3821.C.2 or 3843.C.2.

Universal Waste—any of the following hazardous wastes that are subject to the universal waste requirements of this Chapter:

1. batteries as described in LAC 33:V.3803;
2. pesticides as described in LAC 33:V.3805;
3. thermostats as described in LAC 33:V.3807;
4. lamps as described in LAC 33:V.3809; and
5. antifreeze as described in LAC 33:V.3811.

Universal Waste Handler—a generator (as defined in this Section) of universal waste; or the owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a destination facility, or to a foreign destination. A universal waste handler does not include a person who treats (except under the provisions of LAC 33:V.3821.A or C, or 3843.A or C), disposes of, or recycles universal waste; or a person engaged in the off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.

Universal Waste Transfer Facility—any transportation-related facility including loading docks, parking areas, storage areas and other similar areas where shipments of universal waste are held during the normal course of transportation for 10 days or less.

Universal Waste Transporter—a person engaged in the off-site transportation of universal waste by air, rail, highway, or water.

Response

Exide acknowledges the definitions of this Chapter and will comply.

Subchapter B. Standards for Small Quantity Handlers of Universal Waste

§3815. Applicability

- A. This Subchapter applies to small quantity handlers of universal waste (as defined in LAC 33:V.3813).**

Response

Exide is not a small quantity handler of universal waste; therefore this section does not apply.

§3817. Prohibitions

- A. A small quantity handler of universal waste is:**
- 1. prohibited from disposing of universal waste; and**
 - 2. prohibited from diluting or treating universal waste, except by responding to releases as provided in LAC 33:V.3829; or by managing specific wastes as provided in LAC 33:V.3821.**

Response

Exide is not a small quantity handler of universal waste; therefore this section does not apply.

§3819. Notification

- A. A small quantity handler of universal waste is not required to notify the department of universal waste handling activities.**

Response

Exide is not a small quantity handler of universal waste; therefore this section does not apply.

§3821. Waste Management

- A. Universal Waste Batteries. A small quantity handler of universal waste must manage universal waste batteries in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:**

Response

Exide is not a small quantity handler of universal waste batteries; therefore this section does not apply.

- 1. a small quantity handler of universal waste must contain any universal waste battery that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a container. The container must be closed, structurally sound, compatible with the contents of the battery, and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions;**
- 2. a small quantity handler of universal waste may conduct the following activities as long as the casing of each individual battery cell is not breached and remains intact and closed (except that cells may be opened to remove electrolyte but must be immediately closed after removal):**
 - a. sorting batteries by type;**
 - b. mixing battery types in one container;**
 - c. discharging batteries so as to remove the electric charge;**
 - d. regenerating used batteries;**

- e. **disassembling batteries or battery packs into individual batteries or cells;**
 - f. **removing batteries from consumer products; or**
 - g. **removing electrolyte from batteries; and**
3. **a small quantity handler of universal waste who removes electrolyte from batteries, or who generates other solid waste (e.g., battery pack materials, discarded consumer products) as a result of the activities listed above, must determine whether the electrolyte and/or other solid waste exhibit a characteristic of hazardous waste identified in LAC 33:V.4903;**
- a. **if the electrolyte and/or other solid waste exhibit a characteristic of hazardous waste, it is subject to all applicable requirements of these regulations. The handler is considered the generator of the hazardous electrolyte and/or other waste and is subject to LAC 33:V.Chapter 11;**
 - b. **if the electrolyte or other solid waste does not exhibit a characteristic of hazardous waste, the handler may manage the waste in any way that is in compliance with applicable federal, state or local Solid Waste Regulations.**
- B. **Universal Waste Pesticides. A small quantity handler of universal waste must manage universal waste pesticides in a way that prevents releases of any universal waste or component of a universal waste to the environment. The universal waste pesticides must be contained in one or more of the following:**

Response

Exide is not a small quantity handler of universal waste pesticides; therefore this section does not apply.

- 1. **a container that remains closed, structurally sound, compatible with the pesticide, and that lacks evidence of**

leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions; or

2. a container that does not meet the requirements of Paragraph B.1 of this Section, provided that the unacceptable container is over packed in a container that does meet the requirements of Paragraph B.1 of this Section; or
3. a tank that meets the requirements of LAC 33:V.Chapter 19 except for LAC 33:V.1915.C; or
4. a transport vehicle or vessel that is closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

C. **Universal Waste Thermostats.** A small quantity handler of universal waste must manage universal waste thermostats in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

Response

Exide is not a small quantity handler of universal waste thermostats; therefore this section does not apply.

1. a small quantity handler of universal waste must contain any universal waste thermostat that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a container. The container must be closed, structurally sound, compatible with the contents of the thermostat, and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions;
2. a small quantity handler of universal waste may remove mercury-containing ampules from universal waste thermostats, provided the handler:

- a. removes the ampules in a manner designed to prevent breakage of the ampules;
 - b. removes ampules only over or in a containment device (e.g., tray or pan sufficient to collect and contain any mercury released from an ampule in case of breakage);
 - c. ensures that a mercury clean-up system is readily available to immediately transfer any mercury resulting from spills or leaks from broken ampules, from the containment device to a container that meets the requirements of LAC 33:V.1109.E;
 - d. immediately transfers any mercury resulting from spills or leaks from broken ampules from the containment device to a container that meets the requirements of LAC 33:V.1109.E;
 - e. ensures that the area in which ampules are removed is well ventilated and monitored to ensure compliance with applicable OSHA exposure levels for mercury;
 - f. ensures that employees removing ampules are thoroughly familiar with proper waste mercury handling and emergency procedures, including transfer of mercury from containment devices to appropriate containers;
 - g. stores removed ampules in closed, nonleaking containers that are in good condition;
 - h. packs removed ampules in the container with packing materials adequate to prevent breakage during storage, handling, and transportation; and
3. a small quantity handler of universal waste who removes mercury-containing ampules from thermostats must determine whether the mercury or clean-up residues resulting from spills or leaks, and/or other solid waste generated as a result of the removal of mercury-containing ampules (e.g., remaining

thermostat units) exhibit a characteristic of hazardous waste identified in LAC 33:V.4903;

- a. if the mercury, residues, and/or other solid waste exhibit a characteristic of hazardous waste, it must be managed in compliance with all applicable requirements of these regulations. The handler is considered the generator of the mercury, residues, and/or other waste and must manage it subject to LAC 33:V.Chapter 11;
- b. if the mercury, residues, and/or other solid waste does not exhibit a characteristic of hazardous waste, the handler may manage the waste in any way that is in compliance with applicable federal, state or local Solid Waste Regulations.

D. **Lamps.** A small quantity handler of universal waste must manage lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

Response

Exide is not a small quantity handler of universal waste lamps; therefore this section does not apply.

1. a small quantity handler of universal waste must contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers and packages must remain closed and must lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions; and
2. a small quantity handler of universal waste must immediately clean up and place in a container any lamp that is broken and must place in a container any lamp that shows evidence of breakage, leakage, or damage that could cause the release of mercury or other hazardous constituents to the environment. Containers must be closed, structurally sound, compatible with the contents of the lamps and must lack evidence of leakage, spillage or damage that could cause leakage or

releases of mercury or other hazardous constituents to the environment under reasonably foreseeable conditions.

- E. Universal Waste Antifreeze.** A small quantity handler of universal waste must manage universal waste antifreeze in a way that prevents releases of any universal waste or component of a universal waste to the environment. The universal waste antifreeze must be contained in one or more of the following:

Response

Exide is not a small quantity handler of universal waste antifreeze; therefore this section does not apply.

1. a container that remains closed, structurally sound, and compatible with the antifreeze and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions;
2. a container that does not meet the requirements of Paragraph E.1 of this Section, provided that the unacceptable container is overpacked in a container that does meet the requirements of Paragraph E.1 of this Section;
3. a tank that meets the requirements of LAC 33:V.1915.C; or
4. a transport vehicle or vessel that is closed, structurally sound, and compatible with the antifreeze and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

§3823. Labeling/Marking

- A.** A small quantity handler of universal waste must label or mark the universal waste to identify the type of universal waste as specified below:

Response

Exide is not a small quantity handler of universal waste; therefore, this section does not apply.

1. universal waste batteries (e.g., each battery), or a container in which the batteries are contained, must be labeled or marked clearly with any one of the following phrases: "Universal Waste—Battery(ies)," or "Waste Battery(ies)," or "Used Battery(ies)";
2. a container, (or multiple container package unit), tank, transport vehicle or vessel in which recalled universal waste pesticides as described in LAC 33:V.3805.A.1 are contained must be labeled or marked clearly with:
 - a. the label that was on or accompanied the product as sold or distributed; and
 - b. the words "Universal Waste—Pesticide(s)" or "Waste—Pesticide(s)";
3. a container, tank, or transport vehicle or vessel in which unused pesticide products as described in LAC 33:V.3805.A.2 are contained must be:
 - a. labeled or marked clearly with:
 - i. the label that was on the product when purchased, if still legible;
 - ii. the appropriate label as required under the U.S. Department of Transportation Regulation 49 CFR Part 172; or
 - iii. another label prescribed or designated by the waste pesticide collection program administered or recognized by the state; and

b. the words "Universal Waste—Pesticide(s)" or "Waste—Pesticide(s)."

4. universal waste thermostats (e.g., each thermostat), or a container in which the thermostats are contained, must be labeled or marked clearly with any one of the following phrases: "Universal Waste—Mercury Thermostat(s)," or "Waste Mercury Thermostat(s)," or "Used Mercury thermostat(s)."

5. each lamp or a container or package in which such lamps are contained must be labeled or marked clearly with one of the following phrases: "Universal Waste - Lamp(s)," or "Waste Lamp(s)," or "Used Lamp(s)."

6. universal waste antifreeze, or a container in which the antifreeze is contained, must be labeled or marked clearly with any one of the following phrases: "Universal Waste—Antifreeze," or "Waste Antifreeze," or "Used Antifreeze."

§3825. Accumulation Time Limits

A. A small quantity handler of universal waste may accumulate universal waste for no longer than one year from the date the universal waste is generated, or received from another handler, unless the requirements of Subsection B of this Section are met.

Response

Exide is not a small quantity handler of universal waste; therefore this section does not apply.

B. A small quantity handler of universal waste may accumulate universal waste for longer than one year from the date the universal waste is generated, or received from another handler, if such activity is solely for the purpose of accumulation of such quantities of universal waste as necessary to facilitate proper recovery, treatment, or disposal. However, the handler bears the burden of proving that such activity is solely for the purpose of accumulation of such quantities of universal waste as necessary to facilitate proper recovery, treatment, or disposal.

C. A small quantity handler of universal waste who accumulates universal waste must be able to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received. The handler may make this demonstration by:

- 1. placing the universal waste in a container and marking or labeling the container with the earliest date that any universal waste in the container became a waste or was received;**
- 2. marking or labeling each individual item of universal waste (e.g., each battery or thermostat) with the date it became a waste or was received;**
- 3. maintaining an inventory system on-site that identifies the date each universal waste became a waste or was received;**
- 4. maintaining an inventory system on-site that identifies the earliest date that any universal waste in a group of universal waste items or a group of containers of universal waste became a waste or was received;**
- 5. placing the universal waste in a specific accumulation area and identifying the earliest date that any universal waste in the area became a waste or was received; or**
- 6. any other method which clearly demonstrates the length of time that the universal waste has been accumulated from the date it becomes a waste or is received.**

§3827. Employee Training

A. A small quantity handler of universal waste must inform all employees who handle or have responsibility for managing universal waste. The information must describe proper handling and emergency procedures appropriate to the type(s) of universal waste handled at the facility.

Response

Exide is not a small quantity handler of universal waste; therefore this section does not apply.

§3829. Response to Releases

- A. A small quantity handler of universal waste must immediately contain all releases of universal wastes and other residues from universal wastes.**

Response

Exide is not a small quantity handler of universal waste; therefore this section does not apply.

- B. A small quantity handler of universal waste must determine whether any material resulting from the release is hazardous waste, and if so, must manage the hazardous waste in compliance with all applicable requirements of these regulations. The handler is considered the generator of the material resulting from the release, and must manage it in compliance with LAC 33:V.Chapter 11.**

§3831. Off-Site Shipments

- A. A small quantity handler of universal waste is prohibited from sending or taking universal waste to a place other than another universal waste handler, a destination facility, or a foreign destination.**

Response

Exide is not a small quantity handler of universal waste; therefore this section does not apply.

- B. If a small quantity handler of universal waste self-transport universal waste off-site, the handler becomes a universal waste transporter for those self-transportation activities and must comply with the transporter requirements of Subchapter D of this Chapter while transporting the universal waste.**
- C. If a universal waste being offered for off-site transportation meets the definition of hazardous materials under 49 CFR Parts 171-180, a**

small quantity handler of universal waste must package, label, mark and placard the shipment, and prepare the proper shipping papers in accordance with the applicable U.S. Department of Transportation Regulations under 49 CFR Parts 172-180.

- D. Prior to sending a shipment of universal waste to another universal waste handler, the originating handler must ensure that the receiving handler agrees to receive the shipment.**
- E. If a small quantity handler of universal waste sends a shipment of universal waste to another handler or to a destination facility and the shipment is rejected by the receiving handler or destination facility, the originating handler must either:**
 - 1. receive the waste back when notified that the shipment has been rejected; or**
 - 2. agree with the receiving handler on a destination facility to which the shipment will be sent.**
- F. A small quantity handler of universal waste may reject a shipment containing universal waste, or a portion of a shipment containing universal waste that he has received from another handler. If a handler rejects a shipment or a portion of a shipment, he must contact the originating handler to notify him of the rejection and to discuss reshipment of the load. The handler must:**
 - 1. send the shipment back to the originating handler; or**
 - 2. if agreed to by both the originating and receiving handler, send the shipment to a destination facility.**
- G. If a small quantity handler of universal waste receives a shipment containing hazardous waste that is not a universal waste, the handler must immediately notify the Office of Environmental Compliance, Surveillance Division of the illegal shipment, and provide the name, address, and phone number of the originating shipper. The administrative authority will provide instructions for managing the hazardous waste.**

- H. If a small quantity handler of universal waste receives a shipment of nonhazardous, nonuniversal waste, the handler may manage the waste in any way that is in compliance with applicable federal, state or local Solid Waste Regulations.**

§3833. Tracking Universal Waste Shipments

- A. A small quantity handler of universal waste is not required to keep records of shipments of universal waste.**

Response

Exide is not a small quantity handler of universal waste; therefore this section does not apply.

§3835. Exports

- A. A small quantity handler of universal waste who sends universal waste to a foreign destination, other than to those OECD countries specified in LAC 33:V.1113.I.1.a (in which case the handler is subject to the requirements of LAC 33:V.Chapter 11.Subchapter B), must:**

Response

Exide is not a small quantity handler of universal waste; therefore this section does not apply.

- 1. comply with the requirements applicable to a primary exporter in LAC 33:V.1113.D, G.1.a-d, G.1.f, G.2, and H;**
- 2. export such universal waste only upon consent of the receiving country and in conformance with the EPA Acknowledgment of Consent as defined in LAC 33:V.1113; and**
- 3. provide a copy of the EPA Acknowledgment of Consent for the shipment to the transporter transporting the shipment for export.**

Subchapter C. Standards for Large Quantity Handlers of Universal Waste

§3837. Applicability

- A. This Subchapter applies to large quantity handlers of universal waste (as defined in LAC 33:V.3813).**

Response

Exide does manages the spent nickel-cadmium batteries as universal waste in accordance with this Chapter. The spent lead-acid batteries are reclaimed and recycled in accordance with Chapter 41.

§3839. Prohibitions

- A. A large quantity handler of universal waste is:**

- 1. prohibited from disposing of universal waste; and**

Response

Exide does not dispose of spent nickel-cadmium batteries. Exide sends spent nickel-cadmium batteries off-site for disposal.

- 2. prohibited from diluting or treating universal waste, except by responding to releases as provided in LAC 33:V.3851; or by managing specific wastes as provided in LAC 33:V.3843.**

Response

Exide does not dilute or treat the spent nickel-cadmium batteries.

§3841. Notification

- A. Except as provided in Paragraphs A.1 and 2 of this Section, a large quantity handler of universal waste must have sent written notification of universal waste management to the Office of Environmental Services, Permits Division, and received an EPA Identification Number, before meeting or exceeding the 5,000 kilogram storage limit.**

1. **A large quantity handler of universal waste who has already notified EPA of his hazardous waste management activities and has received an EPA Identification Number is not required to renotify under this Section.**

Response

Exide is not required to submit a notification of universal waste management as the facility has an EPA identification number for the hazardous waste management activities.

2. **A large quantity handler of universal waste who manages recalled universal waste pesticides as described in LAC 33:V.3805.A.1 and who has sent notification to EPA as required by 40 CFR Part 165 is not required to notify for those recalled universal waste pesticides under this Section.**

Response

Exide does not manage recalled pesticides; therefore this section does not apply.

B. This notification must include:

1. **the universal waste handler's name and mailing address;**
2. **the name and business telephone number of the person at the universal waste handler's site who should be contacted regarding universal waste management activities;**
3. **the address or physical location of the universal waste management activities;**
4. **a list of all of the types of universal waste managed by the handler (e.g, batteries, pesticides, thermostats, lamps, antifreeze); and**
5. **a statement indicating that the handler is accumulating more than 5,000 kilograms of universal waste at one time and the types of universal waste (e.g, batteries, pesticides,**

thermostats, lamps, antifreeze) the handler is accumulating above this quantity.

Response

Exide is not required to submit a notification of universal waste management as the facility has an EPA identification number for the hazardous waste management activities.

§3843. Waste Management

A. Universal Waste Batteries. A large quantity handler of universal waste must manage universal waste batteries in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

- 1. a large quantity handler of universal waste must contain any universal waste battery that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a container. The container must be closed, structurally sound, compatible with the contents of the battery, and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions;**

Response

Exide will overpack any spent nickel-cadmium battery that shows evidence of leakage, spillage or damage. The overpack will be kept in the closed position, except when adding or removing waste. The nickel-cadmium batteries are stored in drums in a trailer within the Truck/Trailer Storage Area. The trailer provides containment in addition to the containment berms for the storage area. The Truck/Trailer Storage Area is discussed in greater detail in Chapter 21.

- 2. a large quantity handler of universal waste may conduct the following activities as long as the casing of each individual battery cell is not breached and remains intact and closed (except that cells may be opened to remove electrolyte but must be immediately closed after removal):**
 - a. sorting batteries by type;**

- b. **mixing battery types in one container;**
- c. **discharging batteries so as to remove the electric charge;**
- d. **regenerating used batteries;**
- e. **disassembling batteries or battery packs into individual batteries or cells;**
- f. **removing batteries from consumer products; or**
- g. **removing electrolyte from batteries; and**

Response

Exide acknowledges this requirement and will comply.

- 3. **a. large quantity handler of universal waste who removes electrolyte from batteries, or who generates other solid waste (e.g., battery pack materials, discarded consumer products) as a result of the activities listed above, must determine whether the electrolyte and/or other solid waste exhibit a characteristic of hazardous waste identified in LAC 33:V.4903;**
 - a. **if the electrolyte and/or other solid waste exhibit a characteristic of hazardous waste, it must be managed in compliance with all applicable requirements of these regulations. The handler is considered the generator of the hazardous electrolyte and/or other waste and is subject to LAC 33:V.Chapter 11;**
 - b. **if the electrolyte or other solid waste does not exhibit a characteristic of hazardous waste, the handler may manage the waste in any way that is in compliance with applicable federal, state or local Solid Waste Regulations.**

Response

Exide does not generate electrolyte or other solid waste during storage of nickel-cadmium batteries prior to off-site disposal.

- B. Universal Waste Pesticides. A large quantity handler of universal waste must manage universal waste pesticides in a way that prevents releases of any universal waste or component of a universal waste to the environment. The universal waste pesticides must be contained in one or more of the following:**

Response

Exide does not handle universal waste pesticides; therefore this section does not apply.

- 1. a container that remains closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions; or**
- 2. a container that does not meet the requirements of Paragraph B.1 of this Section, provided that the unacceptable container is over packed in a container that does meet the requirements of Paragraph B.1 of this Section; or**
- 3. a tank that meets the requirements of LAC 33:V.Chapter 19, except for LAC 33:V.1915.C; or**
- 4. a transport vehicle or vessel that is closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.**

- C. Universal Waste Thermostats. A large quantity handler of universal waste must manage universal waste thermostats in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:**

Response

Exide does not handle universal waste thermostats; therefore this section does not apply.

1. a large quantity handler of universal waste must contain any universal waste thermostat that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a container. The container must be closed, structurally sound, compatible with the contents of the thermostat, and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions;
2. a large quantity handler of universal waste may_remove mercury-containing ampules from universal waste thermostats provided the handler:
 - a. removes the ampules in a manner designed to prevent breakage of the ampules;
 - b. removes ampules only over or in a containment device (e.g., tray or pan sufficient to contain any mercury released from an ampule in case of breakage);
 - c. ensures that a mercury clean-up system is readily available to immediately transfer any mercury resulting from spills or leaks from broken ampules, from the containment device to a container that meets the requirements of LAC 33:V.1109;
 - d. immediately transfers any mercury resulting from spills or leaks from broken ampules from the containment device to a container that meets the requirements of LAC 33:V.1109;
 - e. ensures that the area in which ampules are removed is well ventilated and monitored to ensure compliance with applicable OSHA exposure levels for mercury;

- f. ensures that employees removing ampules are thoroughly familiar with proper waste mercury handling and emergency procedures, including transfer of mercury from containment devices to appropriate containers;
 - g. stores removed ampules in closed, nonleaking containers that are in good condition;
 - h. packs removed ampules in the container with packing materials adequate to prevent breakage during storage, handling, and transportation; and
- 3. a large quantity handler of universal waste who removes mercury-containing ampules from thermostats must determine whether the mercury or clean-up residues resulting from spills or leaks and/or other solid waste generated as a result of the removal of mercury-containing ampules (e.g., remaining thermostat units) exhibit a characteristic of hazardous waste identified in LAC 33:V.4903;
 - a. if the mercury, residues, and/or other solid waste exhibit a characteristic of hazardous waste, it must be managed in compliance with all applicable requirements of these regulations. The handler is considered the generator of the mercury, residues, and/or other waste and is subject to LAC 33:V.Chapter 11;
 - b. if the mercury, residues, and/or other solid waste does not exhibit a characteristic of hazardous waste, the handler may manage the waste in any way that is in compliance with applicable federal, state or local Solid Waste Regulations.
- D. Lamps. A large quantity handler of universal waste must manage lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

Response

Exide does not handle universal waste lamps; therefore this section does not apply.

1. a large quantity handler of universal waste must contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers and packages must remain closed and must lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions; and
2. a large quantity handler of universal waste must immediately clean up and place in a container any lamp that is broken and must place in a container any lamp that shows evidence of breakage, leakage, or damage that could cause the release of mercury or other hazardous constituents to the environment. Containers must be closed, structurally sound, compatible with the contents of the lamps and must lack evidence of leakage, spillage or damage that could cause leakage or releases of mercury or other hazardous constituents to the environment under reasonably foreseeable conditions.

- E. **Universal Waste Antifreeze.** A large quantity handler of universal waste must manage universal waste antifreeze in a way that prevents releases of any universal waste or component of a universal waste to the environment. The universal waste antifreeze must be contained in one or more of the following:

Response

Exide does not handle universal waste antifreeze; therefore this section does not apply.

1. a container that remains closed, structurally sound, and compatible with the antifreeze and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions;
2. a container that does not meet the requirements of Paragraph E.1 of this Section, provided that the unacceptable container is

overpacked in a container that does meet the requirements of Paragraph E.1 of this Section;

3. a tank that meets the requirements of LAC 33:V.Chapter 19, except for LAC 33:V.1915.C;
4. a transport vehicle or vessel that is closed, structurally sound, and compatible with the antifreeze and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

§3845. Labeling/Marking

A. A large quantity handler of universal waste must label or mark the universal waste to identify the type of universal waste as specified below:

1. Universal waste batteries (e.g., each battery), or a container or tank in which the batteries are contained, must be labeled or marked clearly with the any one of the following phrases: "Universal Waste—Battery(ies)," or "Waste Battery(ies)," or "Used Battery(ies)";

Response

Exide will mark the trailer containing spent nickel-cadmium batteries with the phrase "Universal Waste – Batteries" or "Waste Batteries" or "Spent Nickel-Cadmium Batteries".

2. A container (or multiple container package unit), tank, transport vehicle or vessel in which recalled universal waste pesticides as described in LAC 33:V.3805.A.1 are contained must be labeled or marked clearly with:
 - a. the label that was on or accompanied the product as sold or distributed; and
 - b. the words "Universal Waste—Pesticide(s)" or "Waste—Pesticide(s)";

Response

Exide does not manage waste pesticides; therefore this citation does not apply.

3. **A container, tank, or transport vehicle or vessel in which unused pesticide products as described in LAC 33:V.3805.A.2 are contained must be:**

a. labeled or marked clearly with:

- i. the label that was on the product when purchased, if still legible;**
- ii. appropriate label as required under the U.S. Department of Transportation Regulation 49 CFR Part 172; or**
- iii. another label prescribed or designated by the pesticide collection program; and**

b. the words "Universal Waste—Pesticide(s)" or "Waste—Pesticide(s)";

Response

Exide does not manage waste pesticides; therefore this citation does not apply.

4. **Universal waste thermostats (e.g., each thermostat), or a container or tank in which the thermostats are contained, must be labeled or marked clearly with any one of the following phrases: "Universal Waste—Mercury Thermostat(s);" or "Waste Mercury Thermostat(s);" or "Used Mercury Thermostat(s)."**

Response

Exide does not manage thermostats; therefore this citation does not apply.

5. each lamp or a container or package in which such lamps are contained must be labeled or marked clearly with any one of the following phrases: "Universal Waste—Lamp(s)," or "Waste Lamp(s)," or "Used Lamp(s)."

Response

Exide does not manage lamps; therefore this citation does not apply.

6. Universal waste antifreeze, or a container in which the antifreeze is contained, must be labeled or marked clearly with any one of the following phrases: "Universal Waste—Antifreeze," or "Waste Antifreeze," or "Used Antifreeze."

Response

Exide does not manage antifreeze; therefore this citation does not apply.

§3847. Accumulation Time Limits

- A. A large quantity handler of universal waste may accumulate universal waste for no longer than one year from the date the universal waste is generated, or received from another handler, unless the requirements of Subsection B of this Section are met.

Response

Exide acknowledges this requirement and will comply.

- B. A large quantity handler of universal waste may accumulate universal waste for longer than one year from the date the universal waste is generated, or received from another handler, if such activity is solely for the purpose of accumulation of such quantities of universal waste as necessary to facilitate proper recovery, treatment, or disposal. However, the handler bears the burden of proving that such activity was solely for the purpose of accumulation of such quantities of universal waste as necessary to facilitate proper recovery, treatment, or disposal.

Response

Exide acknowledges this requirement and will comply.

- C. A large quantity handler of universal waste must be able to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received. The handler may make this demonstration by:**
- 1. placing the universal waste in a container and marking or labeling the container with the earliest date that any universal waste in the container became a waste or was received;**
 - 2. marking or labeling the individual item of universal waste (e.g., each battery or thermostat) with the date it became a waste or was received;**
 - 3. maintaining an inventory system on-site that identifies the date the universal waste being accumulated became a waste or was received;**
 - 4. maintaining an inventory system on-site that identifies the earliest date that any universal waste in a group of universal waste items or a group of containers of universal waste became a waste or was received;**
 - 5. placing the universal waste in a specific accumulation area and identifying the earliest date that any universal waste in the area became a waste or was received; or**
 - 6. any other method which clearly demonstrates the length of time that the universal waste has been accumulated from the date it becomes a waste or is received.**

Response

Exide acknowledges this requirement and will comply.

§3849. Employee Training

- A. A large quantity handler of universal waste must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relative to their responsibilities during normal facility operations and emergencies.**

Response

Exide's Training Manual is provided in Appendix 13. The Training Program includes medical surveillance, lockout/tagout, confined space entry, hearing conservation, respiratory protection, powered industrial truck safety, hazard communication, HAZWOPER, the facility contingency plan, environmental regulations, spill response, work practices (including management of spent nickel-cadmium batteries) and DOT hazardous materials. The training is conducted to ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures relative to their responsibilities during normal facility operations and emergencies.

§3851. Response to Releases

- A. A large quantity handler of universal waste must immediately contain all releases of universal wastes and other residues from universal wastes.**

Response

Exide acknowledges this requirement and will comply.

- B. A large quantity handler of universal waste must determine whether any material resulting from the release is hazardous waste, and if so, must manage the hazardous waste in compliance with all applicable requirements of these regulations. The handler is considered the generator of the material resulting from the release, and is subject to LAC 33:V.Chapter 11.**

Response

Exide acknowledges this requirement and will comply.

§3853. Off-Site Shipments

- A. A large quantity handler of universal waste is prohibited from sending or taking universal waste to a place other than another universal waste handler, a destination facility, or a foreign destination.**

Response

Exide acknowledges this requirement and will comply.

- B. If a large quantity handler of universal waste self-transport universal waste off-site, the handler becomes a universal waste transporter for those self-transportation activities and must comply with the transporter requirements of Subchapter D of this Chapter while transporting the universal waste.**

Response

Exide does not self-transport universal waste off-site; therefore this section does not apply.

- C. If a universal waste being offered for off-site transportation meets the definition of hazardous materials under 49 CFR Parts 171-180, a large quantity handler of universal waste must package, label, mark and placard the shipment, and prepare the proper shipping papers in accordance with the applicable U.S. Department of Transportation Regulations under 49 CFR Parts 172-180.**

Response

Exide acknowledges this requirement and will comply.

- D. Prior to sending a shipment of universal waste to another universal waste handler, the originating handler must ensure that the receiving handler agrees to receive the shipment.**

Response

Exide acknowledges this requirement and will comply.

E. If a large quantity handler of universal waste sends a shipment of universal waste to another handler or to a destination facility and the shipment is rejected by the receiving handler or destination facility, the originating handler must either:

- 1. receive the waste back when notified that the shipment has been rejected; or**
- 2. agree with the receiving handler on a destination facility to which the shipment will be sent.**

Response

Exide acknowledges this requirement and will comply.

F. A large quantity handler of universal waste may reject a shipment containing universal waste, or a portion of a shipment containing universal waste that he has received from another handler. If a handler rejects a shipment or a portion of a shipment, he must contact the originating handler to notify him of the rejection and to discuss reshipment of the load. The handler must:

- 1. send the shipment back to the originating handler; or**
- 2. if agreed to by both the originating and receiving handler, send the shipment to a destination facility.**

Response

Exide acknowledges this requirement and will comply.

G. If a large quantity handler of universal waste receives a shipment containing hazardous waste that is not a universal waste, the handler must immediately notify the Office of Environmental Compliance, Surveillance Division of the illegal shipment, and provide the name, address, and phone number of the originating shipper. The administrative authority will provide instructions for managing the hazardous waste.

Response

Exide acknowledges this requirement and will comply.

- H. If a large quantity handler of universal waste receives a shipment of nonhazardous, nonuniversal waste, the handler may manage the waste in any way that is in compliance with applicable federal, state or local Solid Waste Regulations.**

Response

Exide acknowledges this requirement and will comply.

§3855. Tracking Universal Waste Shipments

- A. Receipt of Shipments. A large quantity handler of universal waste must keep a record of each shipment of universal waste received at the facility. The record may take the form of a log, invoice, manifest, bill of lading, or other shipping document. The record for each shipment of universal waste received must include the following information:**

Response

Exide acknowledges this requirement and will comply.

- 1. the name and address of the originating universal waste handler or foreign shipper from whom the universal waste was sent;**
- 2. the quantity of each type of universal waste received (e.g., batteries, pesticides, thermostats, lamps, antifreeze); and**
- 3. the date of receipt of the shipment of universal waste.**

- B. Shipments Off-Site. A large quantity handler of universal waste must keep a record of each shipment of universal waste sent from the handler to other facilities. The record may take the form of a log, invoice, manifest, bill of lading or other shipping document. The record for each shipment of universal waste sent must include the following information:**

Response

Exide acknowledges this requirement and will comply.

1. the name and address of the universal waste handler, destination facility, or foreign destination to whom the universal waste was sent;
2. the quantity of each type of universal waste sent (e.g., batteries, pesticides, thermostats, lamps, antifreeze); and
3. the date the shipment of universal waste left the facility.

C. Record Retention

1. A large quantity handler of universal waste must retain the records described in Subsection A of this Section for at least three years from the date of receipt of a shipment of universal waste.
2. A large quantity handler of universal waste must retain the records described in Subsection B of this Section for at least three years from the date a shipment of universal waste left the facility.

Response

Exide acknowledges this requirement and will comply.

§3857. Exports

- A. A large quantity handler of universal waste who sends universal waste to a foreign destination, other than to those OECD countries specified in LAC 33:V.1113.1.1.a (in which case the handler is subject to the requirements of LAC 33:V.Chapter 11.Subchapter B), must:

Response

Exide is not an exporter of universal waste; therefore this section does not apply.

1. comply with the requirements applicable to a primary exporter in LAC 33:V.1113.D, G.1.a-d, G.1.f, G.2, and H;
2. export such universal waste only upon consent of the receiving country and in conformance with the EPA Acknowledgment of Consent as defined in LAC 33:V.1113; and
3. provide a copy of the EPA Acknowledgment of Consent for the shipment to the transporter transporting the shipment for export.

Subchapter D. Standards for Universal Waste Transporters

§3859. Applicability

- A. This Subchapter applies to universal waste transporters (as defined in LAC 33:V.3813).

Response

Exide does not transport universal waste; therefore this section does not apply.

§3861. Prohibitions

- A. A universal waste transporter is:

Response

Exide does not transport universal waste; therefore this section does not apply.

1. prohibited from disposing of universal waste; and
3. prohibited from diluting or treating universal waste, except by responding to releases as provided in LAC 33:V.3867.

§3863. Waste Management

- A. A universal waste transporter must comply with all applicable U.S. Department of Transportation Regulations in 49 CFR Parts 171-180 for transport of any universal waste that meets the definition of hazardous material in 49 CFR 171.8. For purposes of the U.S. Department of Transportation Regulations, a material is considered a hazardous waste if it is subject to the hazardous waste manifest requirements specified in LAC 33:V.Chapter 11. Because universal waste does not require a hazardous waste manifest, it is not considered hazardous waste under the U.S. Department of Transportation Regulations.**

Response

Exide does not transport universal waste; therefore this section does not apply.

- B. Some universal waste materials are regulated by the U.S. Department of Transportation as hazardous materials because they meet the criteria for one or more hazard classes specified in 49 CFR 173.2. As universal waste shipments do not require a manifest under LAC 33:V.Chapter 11, they may not be described by the U.S. Department of Transportation proper shipping name "hazardous waste, (I) or (S), n.o.s.," nor may the hazardous material's proper shipping name be modified by adding the word "waste."**

§3865. Storage Time Limits

- A. A universal waste transporter may only store the universal waste at a universal waste transfer facility for 10 days or less.**

Response

Exide does not transport universal waste; therefore this section does not apply.

- B. If a universal waste transporter stores universal waste for more than 10 days, the transporter becomes a universal waste handler and must comply with the applicable requirements of Subchapter B or C of this Chapter while storing the universal waste.**

§3867. Response to Releases

- A. A universal waste transporter must immediately contain all releases of universal wastes and other residues from universal wastes.**

Response

Exide does not transport universal waste; therefore this section does not apply.

- B. A universal waste transporter must determine whether any material resulting from the release is hazardous waste, and if so, it is subject to all applicable requirements of these regulations. If the waste is determined to be a hazardous waste, the transporter is subject to LAC 33:V.Chapter 11.**

§3869. Off-Site Shipments

- A. A universal waste transporter is prohibited from transporting the universal waste to a place other than a universal waste handler, a destination facility, or a foreign destination.**

Response

Exide does not transport universal waste; therefore this section does not apply.

- B. If the universal waste being shipped off-site meets the U.S. Department of Transportation's definition of "hazardous materials" under 49 CFR 171.8, the shipment must be properly described on a shipping paper in accordance with the applicable U.S. Department of Transportation Regulations under 49 CFR Part 172.**

§3871. Exports

- A. A universal waste transporter transporting a shipment of universal waste to a foreign destination other than to those OECD countries specified in LAC 33:V.1113.I.1.a (in which case the transporter is subject to the requirements of LAC 33:V.Chapter 11.Subchapter B) may not accept a shipment if the transporter knows the shipment**

does not conform to the EPA Acknowledgment of Consent. In addition the transporter must ensure that:

Response

Exide does not transport universal waste; therefore this section does not apply.

1. a copy of the EPA Acknowledgment of Consent accompanies the shipment; and
2. the shipment is delivered to the facility designated by the person initiating the shipment.

Subchapter E. Standards for Destination Facilities

§3873. Applicability

- A. The owner or operator of a destination facility (as defined in LAC 33:V.3813) is subject to all applicable requirements of LAC 33:V.Chapters 3, 5, 9, 15, 17, 19, 21, 22, 23, 25, 26, 27, 28, 29, 30, 31, 37, 41, and 43, and the notification requirement under LAC 33:V.105.A.

Response

Exide acknowledges this requirement and will comply.

- B. The owner or operator of a destination facility that recycles a particular universal waste without storing that universal waste before it is recycled must comply with LAC 33:V.4115.B.

Response

Exide acknowledges this requirement and will comply.

§3875. Off-Site Shipments

- A. The owner or operator of a destination facility is prohibited from sending or taking universal waste to a place other than a universal waste handler, another destination facility, or a foreign destination.**

Response

Exide acknowledges this requirement and will comply.

- B. The owner or operator of a destination facility may reject a shipment containing universal waste, or a portion of a shipment containing universal waste. If the owner or operator of the destination facility rejects a shipment or a portion of a shipment, he must contact the shipper to notify him of the rejection and to discuss reshipment of the load. The owner or operator of the destination facility must:**

- 1. send the shipment back to the original shipper; or**
- 2. if agreed to by both the shipper and the owner or operator of the destination facility, send the shipment to another destination facility.**

Response

Exide acknowledges this requirement and will comply.

- C. If the owner or operator of a destination facility receives a shipment containing hazardous waste that was shipped as a universal waste, the owner or operator of the destination facility must immediately notify the Office of Environmental Compliance, Surveillance Division of the illegal shipment, and provide the name, address, and phone number of the shipper. The administrative authority will provide instructions for managing the hazardous waste.**

Response

Exide acknowledges this requirement and will comply.

- D. If the owner or operator of a destination facility receives a shipment of nonhazardous, nonuniversal waste, the owner or operator may**

manage the waste in any way that is in compliance with applicable federal or state Solid Waste Regulations.

Response

Exide acknowledges this requirement and will comply.

§3877. Tracking Universal Waste Shipments

- A. The owner or operator of a destination facility must keep a record of each shipment of universal waste received at the facility. The record may take the form of a log, invoice, manifest, bill of lading, or other shipping document. The record for each shipment of universal waste received must include the following information:**

Response

Exide acknowledges this requirement and will comply.

- 1. the name and address of the universal waste handler, destination facility, or foreign shipper from whom the universal waste was sent;**
 - 2. the quantity of each type of universal waste received (e.g., batteries, pesticides, thermostats, lamps, antifreeze); and**
 - 3. the date of receipt of the shipment of universal waste.**
- B. The owner or operator of a destination facility must retain the records described in Subsection A of this Section for at least three years from the date of receipt of a shipment of universal waste.**

Response

Exide acknowledges this requirement and will comply.

Subchapter F. Import Requirements

§3879. Imports

Persons managing universal waste that is imported from a foreign country into the United States are subject to the applicable requirements of this Chapter, Immediately after the waste enters the United States, as indicated in Subsections A-C of this Section.

Response

Exide does not import universal wastes; therefore this section does not apply.

- A. A universal waste transporter is subject to the universal waste transporter requirements of Subchapter D of this Chapter.**
- B. A universal waste handler is subject to the small or large quantity handler of universal waste requirements of Subchapter B or C of this Chapter, as applicable.**
- C. An owner or operator of a destination facility is subject to the destination facility requirements of Subchapter E of this Chapter.**
- D. Persons managing universal waste that is imported from an OECD country as specified in LAC 33:V.1113.I.1.a are subject to Subsections A-C of this Section, in addition to the requirements of LAC 33:V.Chapter 11.Subchapter B.**

Subchapter G. Petitions to Include Other Wastes Under This Chapter

§3881. General

- A. Any person seeking to add a hazardous waste or a category of hazardous waste to this Chapter may petition for a regulatory amendment under this Subpart and LAC 33:I.Chapter 9.**

Response

Exide acknowledges this section; however, Exide is not petitioning to add a hazardous waste to this Chapter.

B. To be successful, the petitioner must demonstrate to the satisfaction of the administrative authority that regulation under the universal waste regulations in this Chapter:

- 1. is appropriate for the waste or category of waste;**
- 2. will improve management practices for the waste or category of waste; and**
- 3. will improve implementation of the hazardous waste program.**

C. The petition must include the information required by LAC 33:1.Chapter 9. The petition should also address as many of the factors listed in LAC 33:V.3883 as are appropriate for the waste or waste category addressed in the petition.

D. The administrative authority will evaluate and grant or deny petitions using the factors listed in LAC 33:V.3883. The decision will be based on the weight of evidence showing that regulation under this Chapter is appropriate for the waste or category of waste, will improve management practices for the waste or category of waste, and will improve implementation of the hazardous waste program.

§3883. Factors for Petitions to Include Other Wastes Under This Chapter

A. Factors for petitions to include other waste under this Chapter include:

Response

Exide acknowledges this section; however, Exide is not petitioning to add a hazardous waste to this Chapter.

- 1. the waste or category of waste, as generated by a wide variety of generators, is listed in LAC 33:V.4901 or (if not listed) a proportion of the waste stream exhibits one or more characteristics of hazardous waste identified in LAC 33:V.4903. When a characteristic waste is added to the universal waste regulations of this Chapter by using a generic name to identify the waste category (e.g., batteries), the definition of universal**

waste in LAC 33:V.3813 will be amended to include only the hazardous waste portion of the waste category (e.g., hazardous waste batteries). Thus, only the portion of the waste stream that does exhibit one or more characteristics (i.e., is hazardous waste) is subject to the universal waste regulations of this Chapter;

2. the waste or category of waste is not exclusive to a specific industry or group of industries and is commonly generated by a wide variety of types of establishments including, for example, households, retail and commercial businesses, office complexes, conditionally exempt small quantity generators, small businesses, and government organizations, as well as large industrial facilities;
3. the waste or category of waste is generated by a large number of generators (e.g., more than 1,000 nationally) and is frequently generated in relatively small quantities by each generator;
4. systems to be used for collecting the waste or category of waste (including packaging, marking, and labeling practices) would ensure close stewardship of the waste;
5. the risk posed by the waste or category of waste during accumulation and transport is relatively low compared to other hazardous wastes, and specific management standards proposed or referenced by the petitioner (e.g., waste management requirements appropriate to be added to LAC 33:V.3821, 3843, and 3863 and/or applicable Department of Transportation requirements) would be protective of human health and the environment during accumulation and transport;
6. regulation of the waste or category of waste under this Chapter will increase the likelihood that the waste will be diverted from nonhazardous waste management systems (e.g., the municipal waste stream, nonhazardous industrial or commercial waste stream, municipal sewer, or stormwater systems) to recycling, treatment, or disposal in compliance with Subtitle C of RCRA;

7. regulation of the waste or category of waste under this Chapter will improve implementation of and compliance with the hazardous waste regulatory program; and/or
8. such other factors as may be appropriate.



CHAPTER 39

SMALL QUANTITY GENERATORS

This chapter is not applicable since Exide is not a small quantity generator.



CHAPTER 40

USED OIL

Included as this Section are the responses to the Chapter 40 regulations. Included as Appendix 16 is Exide's Used Oil Plan that addresses the applicable citations.

Title 33
ENVIRONMENTAL QUALITY
Part V. Hazardous Waste and Hazardous Materials

Chapter 40. Used Oil

§4001. Definitions

Terms that are defined in LAC 33:V.109 have the same meanings when used in this Chapter.

Aboveground Tank—a tank used to store or process used oil that is not an underground tank as defined in LAC 33:V.109.

Container—any portable device, in which a material is stored, transported, treated, disposed of, or otherwise handled.

Do-it-yourselfer (DIY) Used Oil Collection Center—any site or facility that accepts/aggregates and stores used oil collected only from household do-it-yourselfers.

Existing Tank—a tank that is used for the storage or processing of used oil and that is in operation or for which installation commenced on or prior to the effective date of the authorized used oil program. Installation will be considered to have commenced if the owner or operator has obtained all approvals or permits necessary to begin installation of the tank and if either a continuous on-site installation program has begun or the owner or operator has entered into contractual obligations which cannot be canceled or modified without substantial loss for installation of the tank to be completed within a reasonable time.

Household Do-it-yourselfer Used Oil—oil that is derived from households, such as used oil generated by individuals through the maintenance of their personal vehicles.

Household Do-it-yourselfer Used Oil Generator—an individual who generates household do-it-yourselfer used oil.

New Tank—a tank that will be used to store or process used oil and for which installation commenced after the effective date of the authorized used oil program.

Petroleum Refining Facility—an establishment primarily engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, and lubricants, through fractionation, straight distillation of crude oil, redistillation of unfinished petroleum derivatives, cracking, or other processes (i.e., facilities classified as SIC 2911).

Processing—chemical or physical operations designed to produce from used oil, or to make used oil more amenable for production of, fuel oils, lubricants, or other used-oil-derived product. Processing includes, but is not limited to: blending used oil with virgin petroleum products, blending used oils to meet the fuel specification, filtration, simple distillation, chemical or physical separation, and re-refining.

Re-refining Distillation Bottoms—the heavy fraction produced by vacuum distillation of filtered and dehydrated used oil. The composition of still bottoms varies with column operation and feedstock.

Tank—any stationary device designed to contain an accumulation of used oil, which is constructed primarily of nonearthen materials, (e.g., wood, concrete, steel, plastic) which provides structural support.

Used Oil—any oil that has been refined from crude oil or any synthetic oil that has been used and, as a result of such use, is contaminated by physical or chemical impurities.

Used Oil Aggregation Point—any site or facility that accepts, aggregates, and/or stores used oil collected only from other used oil generation sites owned or operated by the owner or operator of the aggregation point from which used oil is transported to the aggregation point in shipments of no more than 55 gallons. Used oil aggregation points may also accept used oil from household do-it-yourselfers.

Used Oil Burner—a facility where used oil not meeting the specification requirements in LAC 33:V.4005 is burned for energy recovery in devices identified in LAC 33:V.4063.

Used Oil Collection Center—any site or facility that is registered, licensed, permitted, and/or recognized to manage used oil and accepts/aggregates and stores used oil collected from used oil generators regulated under LAC 33:V.Chapter 40.Subchapter B which bring used oil to the collection center in shipments of no more than 55 gallons under the provisions of LAC 33:V.4017. Used oil collection centers may also accept used oil from household do-it-yourselfers.

Used Oil Fuel Marketer—any person who conducts either of the following activities:

1. directs a shipment of off-specification used oil from their facility to a used oil burner; or
2. first claims that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in LAC 33:V.4005.

Used Oil Generator—any person, by site, whose act or process produces used oil or whose act first causes used oil to become subject to regulation.

Used Oil Processor/Re-refiner—a facility that processes used oil.

Used Oil Transfer Facility—any transportation-related facility, including loading docks, parking areas, storage areas, and other areas where shipments of used oil are held for more than 24 hours and not longer than 35 days during the normal course of transportation or prior to an activity performed in accordance with LAC 33:V.4009.B.2. Transfer facilities that store used oil for more than 35 days are subject to regulation under Subchapter E of this Chapter.

Used Oil Transporter—any person who transports used oil, any person who collects used oil from more than one generator and transports the collected oil, and owners and operators of used oil transfer facilities. Used oil transporters may consolidate or aggregate loads of used oil for purposes of transportation but, with the following exception, may not process used oil. Transporters may conduct incidental processing operations that occur in the normal course of used oil transportation (e.g., settling and water separation), but that are not designed to produce (or make more amenable for production of) used oil-derived products or used oil fuel.

Subchapter A. Materials Regulated as Used Oil

§4003. Applicability

This Section identifies those materials which are subject to regulation as used oil under this Chapter. This Section also identifies some materials that are not subject to regulation as used oil under this Chapter and indicates whether these materials may be subject to regulation as hazardous waste under this Subpart.

- A. **Used Oil.** Used oil is to be recycled unless a used oil handler disposes of it or sends it for disposal. Except as provided in LAC 33:V.4005, the regulations of LAC 33:V.Chapter 40 apply to used oil and to materials identified in LAC 33:V.4003 as being subject to regulation as used oil, whether or not the used oil or material exhibits any characteristics of hazardous waste identified in LAC 33:V.4903.

Response

Exide acknowledges and understands this provision. Exide contracts a recycling company to reclaim all used oil generated at the Baton Rouge smelter. The Used Oil Plan is included as Appendix 16. The Used Oil Plan includes procedures for storage and transportation of used oil and a contingency plan for spills.

B. Mixtures of Used Oil and Hazardous Waste

1. Listed Hazardous Waste

- a. **Mixtures of used oil and hazardous waste that is listed in LAC 33:V.4901 are subject to regulation as hazardous waste under LAC 33:V.Subpart 1, rather than as used oil under LAC 33:V.Chapter 40.**

Response

Exide acknowledges and understands this provision. Exide does not mix used oil and hazardous waste. A copy of the Used Oil Plan is included in Appendix 16. The Used Oil Plan includes procedures for storage and transportation of used oil and a contingency plan for spills.

- b. **Rebuttable Presumption for Used Oil. Used oil containing more than 1,000 ppm total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in LAC 33:V.4901. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous waste (for example, by using an analytical method from EPA Publication SW-846, Third Edition, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in LAC 33:V.3105.Table 1). EPA Publication SW-846, Third Edition, is available from the Government Printing Office, Superintendent of Documents, Box 371954, Pittsburgh, PA 15250-7954, (202) 512-1800 (document number 955-001-00000-1).**

Response

Exide acknowledges and understands this provision. Exide does not mix used oil and hazardous waste. A copy of the Used Oil Plan is included in Appendix 16. The Used Oil Plan includes procedures for storage and transportation of used oil and a contingency plan for spills.

- i. **The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins if they are processed through a tolling arrangement as described in LAC 33:V.4017.C to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner or disposed.**

Response

This provision does not apply since Exide does not use oils in metal working.

- ii. The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units in which the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

Response

Exide acknowledges and understands this provision. A copy of the Used Oil Plan is included in Appendix 16. The Used Oil Plan includes procedures for storage and transportation of used oil and a contingency plan for spills. Exide does not manage used oils contaminated with CFCs.

2. **Characteristic Hazardous Waste. Mixtures of used oil and hazardous waste that solely exhibits one or more of the hazardous waste characteristic identified in LAC 33:V.4903 and mixtures of used oil and hazardous waste that is listed in LAC 33:V.4901 solely because it exhibits one or more of the characteristics of hazardous waste identified in LAC 33:V.4903 are subject to:**
 - a. regulation as hazardous waste under LAC 33:V.Subpart 1 rather than as used oil under LAC 33:V.Chapter 40 if the resultant mixture exhibits any characteristics of hazardous waste identified in LAC 33:V.4903, except as provided in LAC 33:V.4003.B.2.c;
 - b. regulation as used oil under LAC 33:V.Chapter 40 if the resultant mixture does not exhibit any characteristics of hazardous waste identified under LAC 33:V.4903, except as specified in LAC 33:V.4003.B.2.c; or
 - c. regulation as used oil under this Chapter if the mixture is of used oil and a waste which is hazardous solely because it exhibits the characteristic of Ignitability (e.g., ignitable-only mineral spirits), provided that the resulting mixture does not exhibit the characteristic of ignitability under LAC 33:V.4903.

Response

Exide acknowledges and understands this provision. Exide does not mix used oil and hazardous waste. A copy of the Used Oil Plan is included in Appendix 16. The Used Oil Plan includes procedures for storage and transportation of used oil and a contingency plan for spills.

C. Materials Containing or Otherwise Contaminated with Used Oil

1. Except as provided in LAC 33:V.4003.C.2, materials containing or otherwise contaminated with used oil from which the used oil has been properly drained or removed to the extent possible such that no visible signs of free-flowing oil remain in or on the material:
 - a. are not used oil and thus not subject to LAC 33:V.Chapter 40; and
 - b. are subject to the hazardous waste regulations of LAC 33:V.Subpart 1, if applicable.

Response

Exide acknowledges and understands this provision. Management of materials contaminated with used oil is addressed in the Used Oil Plan in Appendix 16. The Used Oil Plan includes procedures for storage and transportation of used oil and a contingency plan for spills.

2. **Materials containing or otherwise contaminated with used oil that are burned for energy recovery are subject to regulation as used oil under LAC 33:V.Chapter 40.**

Response

Exide acknowledges and understands this provision, however, Exide does not burn used oil or materials contaminated with used oil for energy recovery.

3. **Used oil drained or removed from materials containing or otherwise contaminated with used oil is subject to regulation as used oil under LAC 33:V.Chapter 40.**

Response

Exide acknowledges and understands this provision. Management of used oil drained or removed from materials containing or contaminated with used oil is addressed in the Used Oil Plan in Appendix 16. The Used Oil Plan includes procedures for storage and transportation of used oil and a contingency plan for spills.

D. Mixtures of Used Oil with Products

1. **Except as provided in LAC 33:V.4003.D.2, mixtures of used oil and fuels or other fuel products are subject to regulation as used oil under LAC 33:V.Chapter 40.**

Response

Exide acknowledges and understands this provision. A copy of the Used Oil Plan is included in Appendix 16. The Used Oil Plan includes procedures for storage and transportation of used oil and a contingency plan for spills. It is not standard practice at Exide to mix oil with fuel or other fuel products; however, mixing of oil with fuel or other fuel products does happen on occasion as part of facility operations.

2. **Mixtures of used oil and diesel fuel mixed on-site by the generator of the used oil for use in the generator's own vehicles are not subject to LAC 33:V.Chapter 40 once the used oil and diesel fuel have been mixed. Prior to mixing, the used oil is subject to the requirements of LAC 33:V.Chapter 40.Subchapter B.**

Response

Exide acknowledges and understands this provision. A copy of the Used Oil Plan is included in Appendix 16. The Used Oil Plan includes procedures for storage and transportation of used oil and a contingency plan for spills. It is not standard practice at Exide to mix oil with diesel fuel; however, mixing of oil with diesel does happen on occasion as part of facility operations.

E. Materials Derived from Used Oil

1. **Materials that are reclaimed from used oil that are used beneficially and are not burned for energy recovery or used in a manner constituting disposal (e.g., re-refined lubricants) are:**
 - a. **not used oil and, thus, are not subject to LAC 33:V.Chapter 40; and**
 - b. **not solid wastes and, thus, are not subject to the hazardous waste regulations of LAC 33:V.Subpart 1 as provided in LAC 33:V.109.Hazardous Waste.4.b.i.**

Response

Exide acknowledges and understands this provision; however Exide does not manage materials derived from used oil. A copy of the Used Oil Plan is included in Appendix 16. The Used Oil Plan includes procedures for storage and transportation of used oil and a contingency plan for spills.

2. **Materials produced from used oil that are burned for energy recovery (e.g., used oil fuels) are subject to regulation as used oil under LAC 33:V.Chapter 40.**

Response

Exide acknowledges and understands this provision; however Exide does not burn materials produced from used oil for energy recovery. A copy of the Used Oil Plan is included in Appendix 16. The Used Oil Plan includes procedures for storage and transportation of used oil and a contingency plan for spills.

3. **Except as provided in LAC 33:V.4003.E.4, materials derived from used oil that are disposed of or used in a manner constituting disposal are:**
 - a. **not used oil and, thus, are not subject to LAC 33:V.Chapter 40; and**
 - b. **solid wastes and, thus, are subject to the hazardous waste regulations of LAC 33:V.Subpart 1 if the materials are listed or identified as hazardous waste.**

Response

Exide acknowledges and understands this provision; however Exide does not manage materials derived from used oil. The Used Oil Plan (Appendix 16) includes procedures for storage and transportation of used oil and a contingency plan for spills.

4. **Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products are not subject to LAC 33:V.Chapter 40.**

Response

This provision does not apply since Exide does not generate this type of material.

- F. **Wastewater. Wastewater, the discharge of which is subject to regulation under either section 402 or section 307(b) of the Clean Water Act and LAC 33:IX (including wastewaters at facilities which have eliminated the discharge of wastewater), contaminated with de minimis quantities of used oil is not subject to the requirements of this Chapter. For purposes of LAC 33:V.4003.F, "de minimis" quantities of used oils are defined as small spills, leaks, or drippings from pumps, machinery, pipes, and other similar equipment during normal operations or small amounts of oil lost to the wastewater treatment system during washing or draining operations. This exception will not apply if the used oil is discarded as a result of abnormal manufacturing operations resulting in substantial leaks, spills, or other releases or the used oil is recovered from wastewaters.**

Response

Exide acknowledges and understands the above provision regarding wastewater contaminated with de minimus quantities of used oil. Wastewater contaminated with de minimus quantities of used oil will be processed in the facility's wastewater treatment plant and discharged in accordance with the facility's NPDES permit. Used oil discarded as a result of abnormal manufacturing operations resulting in substantial leaks, spills or other releases or recovered from wastewaters will be managed in accordance with the Used Oil Plan in Appendix 16 and the Spill Prevention, Control and Countermeasures Plan in Appendix 14. The Used Oil Plan includes procedures for storage and transportation of used oil and a contingency plan for spills.

G. Used Oil Introduced into Crude Oil Pipelines or a Petroleum Refining Facility

1. **Used oil mixed with crude oil or natural gas liquids (e.g., in a production separator or crude oil stock tank) for insertion into a crude oil pipeline is exempt from the requirements of LAC 33:V.Chapter 40. The used oil is subject to the requirements of LAC 33:V.Chapter 40 prior to the mixing of used oil with crude oil or natural gas liquids.**

Response

This citation does not apply, Exide is not a crude oil pipeline or refining facility.

2. **Mixtures of used oil and crude oil or natural gas liquids containing less than 1 percent used oil that are being stored or transported to a crude oil pipeline or petroleum refining facility for insertion into the refining process at a point prior to crude distillation or catalytic cracking are exempt from the requirements of LAC 33:V.Chapter 40.**

Response

This citation does not apply, Exide is not a crude oil pipeline or refining facility.

3. **Used oil that is inserted into the petroleum refining facility process before crude distillation or catalytic cracking without prior mixing with crude oil is exempt from the requirements of LAC 33:V.Chapter 40 provided that the used oil constitutes less than 1 percent of the crude oil feed to any petroleum refining facility process unit at any given time. Prior to insertion into the petroleum refining facility process, the used oil is subject to the requirements of LAC 33:V.Chapter 40.**

Response

This citation does not apply, Exide is not a crude oil pipeline or refining facility.

4. Except as provided in LAC 33:V.4003.G.5, used oil that is introduced into a petroleum refining facility process after crude distillation or catalytic cracking is exempt from the requirements of LAC 33:V.Chapter 40 only if the used oil meets the specification of LAC 33:V.4005. Prior to insertion into the petroleum refining facility process, the used oil is subject to the requirements of LAC 33:V.Chapter 40.

Response

This citation does not apply, Exide is not a crude oil pipeline or refining facility.

5. Used oil that is incidentally captured by a hydrocarbon recovery system or wastewater treatment system as part of routine process operations at a petroleum refining facility and inserted into the petroleum refining facility process is exempt from the requirements of LAC 33:V.Chapter 40. This exemption does not extend to used oil which is intentionally introduced into a hydrocarbon recovery system (e.g., by pouring collected used oil into the wastewater treatment system).

Response

This citation does not apply, Exide is not a crude oil pipeline or refining facility and does not operate a hydrocarbon recovery system.

6. Tank bottoms from stock tanks containing exempt mixtures of used oil and crude oil or natural gas liquids are exempt from the requirements of LAC 33:V.Chapter 40.

Response

This citation does not apply, Exide does not maintain stock tanks containing exempt mixtures of used oil and crude oil or natural gas liquids.

- H. **Used Oil on Vessels.** Used oil produced on vessels from normal shipboard operations is not subject to this Chapter until it is transported ashore.

Response

Exide acknowledges and understands this provision. This citation does not apply to the Exide facility as used oil is not produced on vessels.

- I. **Used Oil Containing PCBs.** Used oil containing PCBs (as defined at 40 CFR 761.3) at any concentration less than 50 ppm is subject to the requirements of this Subchapter. Used oil subject to the requirements of this Subchapter may also be subject to the prohibitions and requirements found at 40 CFR part 761, including sections 761.20(d) and (e). Used oil containing PCBs at concentrations of 50 ppm or greater is not subject to the requirements of this Subchapter, but is subject to regulation under 40 CFR part 761.

Response

Exide acknowledges and understands this provision. Exide does not manage used oil contaminated with PCBs. A copy of the Used Oil Plan is included in Appendix 16. The Used Oil Plan includes procedures for storage and transportation of used oil and a contingency plan for spills.

§4005. Used Oil Specifications

Used oil burned for energy recovery and any fuel produced from used oil by processing, blending, or other treatment is subject to regulation under this Chapter unless it is shown not to exceed any of the allowable levels of the constituents and properties in the specifications shown in LAC 33:V.4005.Table 1. Once used oil that is to be burned for energy recovery has been shown not to exceed any specifications and the person making that showing complies with LAC 33:V.4081, 4083, and 4085.B, the used oil is no longer subject to this Chapter.

Response

Exide acknowledges this provision. However, this citation is not applicable since Exide does not burn used oil for energy recovery.

Table 1
Used Oil Not Exceeding Any Specification Level is
Not Subject to this Chapter When Burned for
Energy Recovery¹

Constituent/property level	Allowable
Arsenic	5 ppm maximum
Cadmium	2 ppm maximum
Chromium	10 ppm maximum
Lead	1,000 ppm maximum
Flash point	100°F minimum
Total halogens	4,000 ppm maximum²

ENDNOTE: ¹The specification does not apply to mixtures of used oil and hazardous waste that continue to be regulated as hazardous waste (see LAC 33:V.4003.B).

ENDNOTE: ²Used oil containing more than 1,000 ppm total halogens is presumed to be a hazardous waste under the rebuttable presumption provided under LAC 33:V.4003.B.1. Such used oil is subject to LAC 33:V.Chapter 30 rather than LAC 33:V.Chapter 40 when burned for energy recovery unless the presumption of mixing can be successfully rebutted.

Note: Applicable standards for the burning of used oil containing PCBs are imposed by 40 CFR 761.20(e).

§4007. Prohibitions

- A. Surface Impoundment Prohibition. Used oil shall not be managed in surface impoundments or waste piles unless the units are subject to regulation under LAC 33:V.Chapters 9, 15, 17, 19, 21, 23, 25, 27-29, 31-33, 35, 37, and 43.**

Response

Exide acknowledges and understands this provision. Exide does not manage used oil in surface impoundments or waste piles. Exide manages Used Oil in tanks as indicated in the Used Oil Plan in Appendix 16. The Used Oil Plan includes procedures for storage and transportation of used oil and a contingency plan for spills.

- B. Use as a Dust Suppressant. The use of used oil as a dust suppressant is prohibited.**

Response

Exide acknowledges that the use of used oil as a dust suppressant is prohibited. Exide uses water for dust suppression, as specified in the Dust Suppression Operational Procedure which is included in Appendix 12.

C. Burning in Particular Units. Off-specification used oil fuel may be burned for energy recovery in only the following devices:

- 1. industrial furnaces identified in LAC 33:V.109;**
- 2. boilers as defined in LAC 33:V.109 that are identified as follows:**
 - a. industrial boilers located on the site of a facility engaged in a manufacturing process where substances are transformed into new products, including the component parts of products, by mechanical or chemical processes;**
 - b. utility boilers used to produce electric power, steam, heated or cooled air, or other gases or fluids for sale; or**
 - c. used oil-fired space heaters provided that the burner meets the provisions of LAC 33:V.4015.**
- 3. hazardous waste incinerators subject to regulation under LAC 33:V.Chapter 31 and Chapter 43.Subchapter N.**

Response

Exide acknowledges and understands this provision. Used oil generated by the Baton Rouge smelter is recycled and not burned for energy recovery.

Subchapter B. Standards for Used Oil Generators

§4009. Applicability

A. General. Except as provided in LAC 33:V.4009.A.1-4, this Subchapter applies to all used oil generators.

- 1. Household Do-it-yourself Used Oil Generators.** Household do-it-yourself used oil generators are not subject to regulation under LAC 33:V.Chapter 40.
- 2. Vessels.** Vessels at sea or at port are not subject to LAC 33:V.Chapter 40.Subchapter B. For purposes of this Subchapter, used oil produced on vessels from normal shipboard operations is considered to be generated at the time it is transported ashore. The owner or operator of the vessel and the person(s) removing or accepting used oil from the vessel are co-generators of the used oil and are both responsible for managing the waste in compliance with this Subchapter once the used oil is transported ashore. The co-generators may decide among them which party will fulfill the requirements of this Subchapter.
- 3. Diesel Fuel.** Mixtures of used oil and diesel fuel mixed by the generator of the used oil for use in the generator's own vehicles are not subject to LAC 33:V.Chapter 40 once the used oil and diesel fuel have been mixed. Prior to mixing, the used oil fuel is subject to the requirements of this Subchapter.
- 4. Farmers.** Farmers who generate an average of 25 gallons per month or less of used oil from vehicles or machinery used on the farm in a calendar year are not subject to the requirements of LAC 33:V.Chapter 40.

Response

Exide is a used oil generator and acknowledges that, except as provided in LAC 33:V.4009.A.1-4, this subchapter applies to all used oil generators.

B. Other Applicable Provisions. Used oil generators who conduct the following activities are subject to the requirements of other applicable provisions of LAC 33:V.Chapter 40 as indicated in LAC 33:V.4009.B.1-5:

- 1. generators who transport used oil, except under the self-transport provisions of LAC 33:V.4017.A and B, must also comply with LAC 33:V.Chapter 40.Subchapter D;**
- 2. generators who process or re-refine used oil must also comply with LAC 33:V.Chapter 40.Subchapter E, except as provided in LAC 33:V.4009.B.2.b. Generators who perform the following activities are not processors provided that the used oil is generated on-site and is not being sent off-site to a burner of on- or off-specification used oil fuel:**
 - a. filtering, cleaning, or otherwise reconditioning used oil before returning it for reuse by the generator;**
 - b. separating used oil from wastewater generated on-site to make the wastewater acceptable for discharge or reuse pursuant to section 402 or section 307(b) of the Clean Water Act, LAC 33:IX, or other applicable federal or state regulations governing the management or discharge of wastewater;**
 - c. using oil mist collectors to remove small droplets of used oil from in-plant air to make plant air suitable for continued recirculation;**
 - d. draining or otherwise removing used oil from materials containing or otherwise contaminated with used oil in order to remove excessive oil to the extent possible in accordance with LAC 33:V.4003.C; or**
 - e. filtering, separating, or otherwise reconditioning used oil before burning it in a space heater pursuant to LAC 33:V.4015;**

3. generators who burn off-specification used oil for energy recovery, except under the on-site space heater provisions of LAC 33:V.4015, must also comply with LAC 33:V.Chapter 40.Subchapter F;
4. generators who direct shipments of off-specification used oil from their facility to a used oil burner or first claim that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in LAC 33:V.4005 must also comply with LAC 33:V.Chapter 40.Subchapter G; and
5. generators who dispose of used oil, including the use of used oil as a dust suppressant, must also comply with LAC 33:V.Chapter 40.Subchapter H.

Response

Exide acknowledges these provisions. However, Exide does not conduct any of the above activities.

§4011. Hazardous Waste Mixing

- A. Mixtures of used oil and hazardous waste must be managed in accordance with LAC 33:V.4003.B.

Response

Exide acknowledges that all mixtures of used oil and hazardous waste must be managed in accordance with LAC 33:V.4003.B. Exide does not mix used oil and hazardous waste. The Used Oil Plan is included in Appendix 16. The Used Oil Plan includes procedures for storage and transportation of used oil and a contingency plan for spills.

- B. The rebuttable presumption for used oil of LAC 33:V.4003.B.1.b applies to used oil managed by generators. Under the rebuttable presumption for used oil of LAC 33:V.4003.B.1.b, used oil containing greater than 1,000 ppm total halogens is presumed to be a hazardous waste and, thus, must be managed as hazardous waste and not as used oil unless the presumption is rebutted. However, the rebuttable presumption does not apply to certain metalworking oils/fluids and certain used oils removed from refrigeration units.

Response

Exide acknowledges and understands this provision. Exide does not mix used oil and hazardous waste. A copy of the Used Oil Plan is included in Appendix 16. The Used Oil Plan includes procedures for storage and transportation of used oil and a contingency plan for spills.

§4013. Used Oil Storage

Used oil generators are subject to all applicable Spill Prevention, Control, and Countermeasures (40 CFR part 112) in addition to the requirements of this Subchapter. Used oil generators are also subject to the Underground Storage Tanks (LAC 33:XI) standards for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of this Subchapter.

Response

Exide acknowledges and understands this provision. A copy of the Used Oil Plan is included in Appendix 16. The Used Oil Plan includes procedures for storage and transportation of used oil and a contingency plan for spills. The requirements of 40 CFR part 112 are addressed in the Spill Prevention, Control and Countermeasures Plan included in Appendix 14. The requirements of Underground Storage Tank (LAC 33:XI) standards do not apply as underground storage tanks are not used for storage of used oil.

- A. Storage Units. Used oil generators shall not store used oil in units other than tanks, containers, or units subject to regulation under LAC 33:V.Chapters 9, 15, 17, 19, 21, 23, 25, 27-29, 31-33, 35, 37, and 43.**

Response

Used oil will not be stored at Exide in units other than tanks, containers, or units subject to the regulations listed above. Please refer to the Used Oil Plan in Appendix 16 for detailed information regarding used oil storage at Exide. The Used Oil Plan includes procedures for storage and transportation of used oil and a contingency plan for spills.

- B. Condition of Units. Containers and aboveground tanks used to store used oil at generator facilities must:**

- 1. be in good condition (no severe rusting, apparent structural defects or deterioration); and**

2. not be leaking (no visible leaks).

Response

All containers/aboveground tanks used to store used oil at Exide will be in good condition with no severe rusting, apparent structural defects or deterioration. The unit will not have any visible leaks.

C. Labels

1. Containers and aboveground tanks used to store used oil at generator facilities must be labeled or marked clearly with the words "Used Oil."
2. Fill pipes used to transfer used oil into underground storage tanks at generator facilities must be labeled or marked clearly with the words "Used Oil."

Response

Exide will label or mark clearly any container or aboveground tank used to store used oil or fill pipes used to transfer used oil with the words "Used Oil". Underground storage tanks are not used to store used oil at Exide.

- D. Response to Releases.** Upon detection of a release of used oil to the environment which is not subject to the requirements of LAC 33:XI.715 and which has occurred after the effective date of the recycled used oil management program in effect in the state in which the release is located, a generator must perform the following cleanup steps:

1. stop the release;
2. contain the released used oil;
3. clean up and properly manage the released used oil and other materials; and

4. if necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.

Response

Upon the detection of a used oil release to the environment, Exide will follow the provisions listed in the Spill Prevention, Control and Counter Measures Plan (Appendix 14) including – stop the release, contain any released used oil, clean up and properly manage the released used oil and other materials. If necessary, the used oil storage unit will be repaired or replaced prior to returning to service.

§4015. On-site Burning in Space Heaters

Generators may burn used oil in used oil-fired space heaters provided that:

- A. the heater burns only used oil that the owner or operator generates or used oil received from household do-it-yourself used oil generators;
- B. the heater is designed to have a maximum capacity of not more than 0.5 million Btu per hour; and
- C. the combustion gases from the heater are vented to the ambient air.

Response

Exide acknowledges this provision. However it is not applicable since Exide does not burn used oil.

§4017. Off-site Shipments

Except as provided in LAC 33:V.4017.A-C, generators must ensure that their used oil is transported only by transporters who have obtained EPA identification numbers.

- A. **Self-transportation of Small Amounts to Approved Collection Centers. Generators may transport, without an EPA identification number, used oil that is generated at the generator's site and used oil collected from household do-it-yourselfers to a used oil collection center provided that:**

1. the generator transports the used oil in a vehicle owned by the generator or owned by an employee of the generator;
2. the generator transports no more than 55 gallons of used oil at any one time; and
3. the generator transports the used oil to a used oil collection center that is registered, licensed, permitted, or recognized to manage used oil.

Response

Exide acknowledges and understands this provision and will comply by using a transporter with an EPA identification number. If Exide self-transported used oil to an approved collection center as provided in LAC 33:V.4017.A, no more than 55-gallons of used oil will be transported at any one time.

B. Self-transportation of Small Amounts to Aggregation Points Owned by the Generator. Generators may transport, without an EPA identification number, used oil that is generated at the generator's site to an aggregation point provided that:

1. the generator transports the used oil in a vehicle owned by the generator or owned by an employee of the generator;
2. the generator transports no more than 55 gallons of used oil at any one time; and
3. the generator transports the used oil to an aggregation point that is owned and/or operated by the same generator.

Response

Exide acknowledges and understands this provision and will comply by using a transporter with an EPA identification number.

C. Tolling Arrangements. Used oil generators may arrange for used oil to be transported by a transporter who does not have an EPA identification number if the used oil is reclaimed under a contractual agreement according to which reclaimed oil is returned by the

processor/re-refiner to the generator for use as a lubricant, cutting oil, or coolant. The contract (known as a "tolling arrangement") must indicate:

1. the type of used oil and the frequency of shipments;
2. that the vehicle used to transport the used oil to the processing/re-refining facility and to deliver recycled used oil back to the generator is owned and operated by the used oil processor/re-refiner; and
3. that reclaimed oil will be returned to the generator.

Response

Exide acknowledges this provision. Exide's used oil is reclaimed and is returned to the facility for use. The recycling company, including transportation, has an EPA identification number.

Subchapter C. Standards for Used Oil Collection Centers and Aggregation Points

§4019. Do-it-yourselfer Used Oil Collection Centers

- A. **Applicability.** This Section applies to owners or operators of all do-it-yourselfer (DIY) used oil collection centers.
- B. **DIY Used Oil Collection Center Requirements.** Owners or operators of all DIY used oil collection centers must comply with the generator standards in LAC 33:V.Chapter 40.Subchapter B and any applicable requirements set forth in LAC 33:VII.

Response

Exide is not a used oil collection center. Therefore, this subchapter does not apply.

§4021. Used Oil Collection Centers

- A. Applicability.** This Section applies to owners or operators of used oil collection centers. A used oil collection center is any site or facility that accepts/aggregates and stores used oil collected from used oil generators regulated under LAC 33:V.Chapter 40.Subchapter B who bring used oil to the collection center in shipments of no more than 55 gallons under the provisions of LAC 33:V.4017.A. Used oil collection centers may also accept used oil from household do-it-yourselfers.
- B. Used Oil Collection Center Requirements.** Owners or operators of all used oil collection centers must:
1. comply with the generator standards in LAC 33:V.Chapter 40.Subchapter B and any applicable requirements set forth in LAC 33:VII; and
 2. be registered, licensed, permitted, and/or recognized to manage used oil.

§4023. Used Oil Aggregation Points Owned by the Generator

- A. Applicability.** This Section applies to owners or operators of all used oil aggregation points. A used oil aggregation point is any site or facility that accepts, aggregates, and/or stores used oil collected only from other used oil generation sites owned or operated by the owner or operator of the aggregation point from which used oil is transported to the aggregation point in shipments of no more than 55 gallons under the provisions of LAC 33:V.4017.B. Used oil aggregation points may also accept used oil from household do-it-yourselfers.
- B. Used Oil Aggregation Point Requirements.** Owners or operators of all used oil aggregation points must comply with the generator standards in LAC 33:V.Chapter 40.Subchapter B and any applicable requirements set forth in LAC 33:VII.

Subchapter D. Standards for Used Oil Transporter and Transfer Facilities

§4025. Applicability

A. General. Except as provided in LAC 33:V.4025.A.1-4, this Subchapter applies to all used oil transporters.

- 1. This Subchapter does not apply to on-site transportation.**
- 2. This Subchapter does not apply to generators who transport shipments of used oil totaling 55 gallons or less from the generator to a used oil collection center as specified in LAC 33:V.4017.A.**
- 3. This Subchapter does not apply to generators who transport shipments of used oil totaling 55 gallons or less from the generator to a used oil aggregation point owned or operated by the same generator as specified in LAC 33:V.4017.B.**
- 4. This Subchapter does not apply to transportation of used oil from household do-it-yourselfers to a regulated used oil generator, collection center, aggregation point, processor/re-refiner, or burner subject to the requirements of LAC 33:V.Chapter 40. Except as provided in LAC 33:V.4025.A.1-3, this Subchapter does, however, apply to transportation of collected household do-it-yourselfer used oil from regulated used oil generators, collection centers, aggregation points, or other facilities where household do-it-yourselfer used oil is collected.**

Response

Exide is not a used oil transporter. Therefore, this subchapter is not applicable.

B. Imports and Exports. Transporters who import used oil from abroad or export used oil outside of the United States are subject to the requirements of this Subchapter from the time the used oil enters and until the time it exits the United States.

- C. Trucks Used to Transport Hazardous Waste.** Unless trucks previously used to transport hazardous waste are emptied as described in LAC 33:V.109.*Empty Container* prior to transporting used oil, the used oil is considered to have been mixed with the hazardous waste and must be managed as hazardous waste unless, under the provisions of LAC 33:V.4003.B, the hazardous waste/used oil mixture is determined not to be hazardous waste.
- D. Other Applicable Provisions.** Used oil transporters who conduct the following activities are also subject to other applicable provisions of this Chapter as indicated in LAC 33:V.4025.D.1-5:
1. transporters who generate used oil must also comply with LAC 33:V.Chapter 40.Subchapter B;
 2. transporters who process or re-refine used oil, except as provided in LAC 33:V.4027, must also comply with LAC 33:V.Chapter 40.Subchapter E;
 3. transporters who burn off-specification used oil for energy recovery must also comply with LAC 33:V.Chapter 40.Subchapter F;
 4. transporters who direct shipments of off-specification used oil from their facility to a used oil burner or first claim that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in LAC 33:V.4005 must also comply with LAC 33:V.Chapter 40.Subchapter G; and
 5. transporters who dispose of used oil must also comply with LAC 33:V.Chapter 40.Subchapter H.

§4027. Restrictions on Transporters Who Are Not Also Processors or Re-refiners

- A.** Used oil transporters may consolidate or aggregate loads of used oil for purposes of transportation. However, except as provided in LAC 33:V.4027.B, used oil transporters may not process used oil unless they also comply with the requirements for processors/re-refiners in LAC 33:V.Chapter 40.Subchapter E.

- B. Transporters may conduct incidental processing operations that occur in the normal course of used oil transportation (e.g., settling and water separation), but that are not designed to produce (or make more amenable for production of) used oil-derived products unless they also comply with the processor/re-refiner requirements in LAC 33:V.Chapter 40.Subchapter E.**
- C. Transporters of used oil that is removed from oil-bearing electrical transformers and turbines and filtered by the transporter or at a transfer facility prior to being returned to its original use are not subject to the processor/re-refiner requirements in LAC 33:V.Chapter 40.Subchapter E.**

§4029. Notification

- A. Identification Numbers. Used oil transporters who have not previously complied with the notification requirements of LAC 33:V.Chapter 40 must comply with these requirements and obtain an EPA identification number.**
- B. Mechanics of Notification. A used oil transporter who has not received an EPA identification number may obtain one by notifying the administrative authority of their used oil activity by submitting a completed Louisiana Notification of Hazardous Waste Activity Form (HW-1).**
- C. Upon promulgation of this Chapter, used oil transporters and transfer facilities who have previously notified must renotify the administrative authority of used oil activity.**
- D. Used oil transporters and transfer facilities must notify the administrative authority within seven business days if any of the information submitted in the application for the identification number changes.**

§4031. Used Oil Transportation

- A. Deliveries. A used oil transporter must deliver all used oil received to:**

1. another used oil transporter, provided that the transporter has obtained an EPA identification number;
 2. a used oil processing/re-refining facility which has obtained an EPA identification number;
 3. an off-specification used oil burner facility which has obtained an EPA identification number; or
 4. an on-specification used oil burner facility.
- B. DOT Requirements.** Used oil transporters must comply with all applicable requirements under the U.S. Department of Transportation regulations in 49 CFR parts 171-180. Persons transporting used oil that meets the definition of a hazardous material in 49 CFR 171.8 must comply with all applicable regulations in 49 CFR parts 171-180.
- C. Used Oil Discharges**
1. In the event of a discharge of used oil during transportation, the transporter must take appropriate immediate action to protect human health and the environment (e.g., notify local authorities, dike the discharge area, etc.).
 2. If a discharge of used oil occurs during transportation and an official acting within the scope of official responsibilities determines that immediate removal of the used oil is necessary to protect human health or the environment, that official may authorize the removal of the used oil by transporters who do not have EPA identification numbers.
 3. An air, rail, highway, or water transporter who has discharged used oil must:
 - a. give notice, if required by 49 CFR 171.15, to the National Response Center (800/424-8802 or 202/426-2675); and

- b. report in writing as required by 49 CFR 171.16 to the Director, Office of Hazardous Materials Regulations, Materials Transportation Bureau, Department of Transportation, Washington, DC 20590.**
- 4. A water transporter who has discharged used oil must give notice as required by 33 CFR 153.203.**
- 5. A transporter must clean up any used oil discharge that occurs during transportation or take such action as may be required or approved by federal, state, or local officials so that the used oil discharge no longer presents a hazard to human health or the environment.**

§4033. Rebuttable Presumption for Used Oil

- A. To ensure that used oil is not a hazardous waste under the rebuttable presumption of LAC 33:V.4003.B.1.b, the used oil transporter must determine whether the total halogen content of used oil being transported or stored at a transfer facility is above or below 1,000 ppm.**
- B. The transporter must make this determination by:**
 - 1. testing the used oil; or**
 - 2. applying knowledge of the halogen content of the used oil in light of the materials or processes used.**
- C. If the used oil contains greater than or equal to 1,000 ppm total halogens, it is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste, which is listed in LAC 33:V.4901. The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste (for example, by using an analytical method from SW-846, Third Edition, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents, which are listed in LAC 33:V.3105.Table 1). EPA Publication SW-846, Third Edition, is available from the Government Printing Office,**

1. The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins if they are processed, through a tolling arrangement, as described in LAC 33:V.4017.C, to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner or disposed.
 2. The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units if the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.
- D. **Record Retention.** Records of analyses conducted or information used to comply with LAC 33:V.4033.A-C must be maintained by the transporter for at least three years.

§4035. Used Oil Storage at Transfer Facilities

Used oil transporters are subject to all applicable spill prevention, control, and countermeasures (40 CFR part 112) in addition to the requirements of this Subchapter. Used oil transporters are also subject to the Underground Storage Tanks (LAC 33:XI) standards for used oil stored in underground tanks, whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of this Subchapter. Used oil transfer facility status is contingent upon approval of the administrative authority.

- A. **Applicability.** This Section applies to used oil transfer facilities. Used oil transfer facilities are transportation-related facilities, including loading docks, parking areas, storage areas, and other areas, where shipments of used oil are held for more than 24 hours during the normal course of transportation and not longer than 35 days. Transfer facilities that store used oil for more than 35 days are subject to regulation under LAC 33:V.Chapter 40.Subchapter E.
- B. **Storage Units.** Owners or operators of used oil transfer facilities may not store used oil in units other than tanks, containers, or units

subject to regulation under LAC 33:V.Chapters 9, 15, 17, 19, 21, 23, 25, 27-29, 31-33, 35, 37, and 43.

C. Condition of Units. Containers and aboveground tanks used to store used oil at transfer facilities must:

- 1. be in good condition (no severe rusting, apparent structural defects or deterioration); and**
- 2. not be leaking (no visible leaks).**

D. Secondary Containment for Containers. Containers used to store used oil at transfer facilities must be equipped with a secondary containment system.

- 1. The secondary containment system must consist of, at a minimum:**
 - a. dikes, berms, or retaining walls; and**
 - b. a floor. The floor must cover the entire area within the dikes, berms, or retaining walls; or**
 - c. an equivalent secondary containment system.**
- 2. The entire containment system, including walls and floors, must be sufficiently impervious to used oil to prevent any used oil which is released into the containment system from migrating out of the system to the soil, groundwater, or surface water.**

E. Secondary Containment for Existing Aboveground Tanks. Existing aboveground tanks used to store used oil at transfer facilities must be equipped with a secondary containment system.

- 1. The secondary containment system must consist of, at a minimum:**

- a. dikes, berms, or retaining walls; and
 - b. a floor. The floor must cover the entire area within the dike, berm, or retaining wall except areas where existing portions of the tank meet the ground; or
 - c. an equivalent secondary containment system.
2. The entire containment system, including walls and floors, must be sufficiently impervious to used oil to prevent any used oil which is released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

F. Secondary Containment for New Aboveground Tanks. New aboveground tanks used to store used oil at transfer facilities must be equipped with a secondary containment system.

1. The secondary containment system must consist of, at a minimum:
- a. dikes, berms; or retaining walls; and
 - b. a floor. The floor must cover the entire area within the dike, berm, or retaining wall; or
2. The entire containment system, including walls and floors, must be sufficiently impervious to used oil to prevent any used oil which is released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

G. Labels

1. Containers and aboveground tanks used to store used oil at transfer facilities must be labeled or marked clearly with the words "Used Oil."

2. **Fill pipes used to transfer used oil into underground storage tanks at transfer facilities must be labeled or marked clearly with the words "Used Oil."**

H. Response to Releases. Upon detection of a release of used oil to the environment which is not subject to the requirements of LAC 33:XI.715 and which occurred after the effective date of the recycled used oil management program in effect in the state in which the release is located, the owner/operator of a transfer facility must perform the following cleanup steps:

1. **stop the release;**
2. **contain the released used oil;**
3. **clean up and manage properly the released used oil and other materials; and**
4. **if necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.**

§4037. Tracking

A. Acceptance. Used oil transporters must keep a record of each used oil shipment accepted for transport. This record shall be in the form of a used oil reuse/recycle manifest obtained from the department. Records for each shipment must include:

1. **the name and address of the generator, transporter, or processor/re-refiner who provided the used oil for transport;**
2. **the EPA identification number (if applicable) of the generator, transporter, or processor/re-refiner who provided the used oil for transport;**
3. **the quantity of used oil accepted;**

4. the date of acceptance; and
 5. except as provided in LAC 33:V.4037.A.5.b, the signature, dated upon receipt of the used oil, of a representative of the generator, transporter, or processor/re-refiner who provided the used oil for transport. Intermediate rail transporters are not required to sign the record of acceptance.
- B. Deliveries.** Used oil transporters must keep a record of each shipment of used oil that is delivered to another used oil transporter or to a used oil burner, processor/re-refiner, or disposal facility. This record shall be in the form of a used oil reuse/recycle manifest obtained from the department. Records of each delivery must include:
1. the name and address of the receiving facility or transporter;
 2. the EPA identification number of the receiving facility or transporter;
 3. the quantity of used oil delivered;
 4. the date of delivery;
 5. except as provided in LAC 33:V.4037.A.5.b, the signature, dated upon receipt of the used oil, of a representative of the receiving facility or transporter. Intermediate rail transporters are not required to sign the record of delivery.
- C. Exports of Used Oil.** Used oil transporters must maintain the records described in LAC 33:V.4037.B.1-4 for each shipment of used oil exported to any foreign country.
- D. Record Retention.** The records described in LAC 33:V.4037.A-C must be maintained for at least three years.

§4039. Management of Residues

Transporters who generate residues from the storage or transport of used oil must manage the residues as specified in LAC 33:V.4003.E.

Subchapter E. Standards for Used Oil Processors and Re-Refiners

§4041. Applicability

A. The requirements of this Subchapter apply to owners and operators of facilities that process used oil. The requirements of this Subchapter do not apply to:

- 1. transporters that conduct incidental processing operations that occur during the normal course of transportation as provided in LAC 33:V.4027; or**
- 2. burners that conduct incidental processing operations that occur during the normal course of used oil management prior to burning as provided in LAC 33:V.4063.B.**

Response

Exide is not a processor or refiner of used oil. Therefore, this subchapter is not applicable.

B. Other Applicable Provisions. Used oil processors/re-refiners who conduct the following activities are also subject to the requirements of other applicable provisions of this Chapter as indicated in LAC 33:V.4041.B.1-5:

- 1. processors/re-refiners who generate used oil must also comply with LAC 33:V.Chapter 40.Subchapter B;**
- 2. processors/re-refiners who transport used oil must also comply with LAC 33:V.Chapter 40.Subchapter D;**

3. except as provided in LAC 33:V.4041.B.3.a and b, processors/re-refiners who burn off-specification used oil for energy recovery must also comply with LAC 33:V.Chapter 40.Subchapter F. Processors/re-refiners burning used oil for energy recovery under the following conditions are not subject to LAC 33:V.Chapter 40.Subchapter F:
 - a. the used oil is burned in an on-site space heater that meets the requirements of LAC 33:V.4015; or
 - b. the used oil is burned for purposes of processing used oil which is considered burning incidentally to used oil processing;
4. processors/re-refiners who direct shipments of off-specification used oil from their facility to a used oil burner or first claim that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in LAC 33:V.4005 must also comply with LAC 33:V.Chapter 40.Subchapter G; and
5. processors/re-refiners who dispose of used oil must also comply with LAC 33:V.Chapter 40.Subchapter H.

§4043. Notification

- A. **Identification Numbers.** Used oil processors and re-refiners who have not previously complied with the notification requirements of LAC 33:V.Chapter 40 must comply with these requirements and obtain an EPA identification number.
- B. **Mechanics of Notification.** A used oil processor or re-refiner who has not received an EPA identification number may obtain one by notifying the administrative authority of their used oil activity by submitting a completed Louisiana Notification of Hazardous Waste Activity Form (HW-1).

- C. Upon promulgation of this Chapter, used oil processors and re-refiners who have previously notified must renotify the administrative authority of used oil activity.**
- D. Used oil processors and re-refiners must notify the administrative authority within seven business days if any of the information submitted in the application for the identification number changes.**

§4045. General Facility Standards

- A. Preparedness and Prevention. Owners and operators of used oil processing and re-refining facilities must comply with the following requirements:**

- 1. Maintenance and Operation of Facility. Facilities must be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned release of used oil to air, soil, or surface water which could threaten human health or the environment;**
- 2. Required Equipment. All facilities must be equipped with the following, unless none of the hazards posed by used oil handled at the facility could require a particular kind of equipment specified in LAC 33:V.4045.A.2.a-d:**
 - a. an internal communications or alarm system capable of providing immediate emergency instruction (voice or signal) to facility personnel;**
 - b. a device, such as a telephone (immediately available at the scene of operations) or a hand-held two-way radio, capable of summoning emergency assistance from local police departments, fire departments, or emergency response teams;**
 - c. portable fire extinguishers, fire control equipment (including special extinguishing equipment, such as that using foam, inert gas, or dry chemicals), spill control equipment, and decontamination equipment; and**

- d. **water at adequate volume and pressure to supply water hose streams, or foam producing equipment, or automatic sprinklers, or water spray systems;**
- 3. **Testing and Maintenance of Equipment. All facility communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment, where required, must be tested and maintained as necessary to ensure its proper operation in time of emergency;**
- 4. **Access to Communications or Alarm System**
 - a. **Whenever used oil is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation must have immediate access to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, unless such a device is not required in LAC 33:V.4045.A.2;**
 - b. **If there is ever just one employee on the premises while the facility is operating, the employee must have immediate access to a communication device, such as a telephone (immediately available at the scene of operation) or a hand-held two-way radio, capable of summoning external emergency assistance, unless such a device is not required in LAC 33:V.4045.A.2;**
- 5. **Required Aisle Space. The owner or operator must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes; and**
- 6. **Arrangements with Local Authorities**
 - a. **The owner or operator must attempt to make the following arrangements, as appropriate for the type of**

used oil handled at the facility and the potential need for the services of these organizations:

- i. to familiarize police, fire departments, and emergency response teams with the layout of the facility, properties of used oil handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to roads inside the facility, and possible evacuation routes;**
- ii. to designate primary emergency authority to a specific police and a specific fire department for those instances when multiple departments might respond to an emergency and to make further agreements with any other departments to provide support to the primary emergency authority;**
- iii. to make agreements with emergency response teams, emergency response contractors, and equipment suppliers; and**
- iv. to familiarize local hospitals with the properties of used oil handled at the facility and the types of injuries or illnesses which could result from fires, explosions, or releases at the facility;**

- b. Where local authorities decline to enter into such arrangements, the owner or operator must document the refusal in the operating record.**

B. Contingency Plan and Emergency Procedures. Owners and operators of used oil processing and re-refining facilities must comply with the following requirements:

1. Purposes and Implementation of Contingency Plan

- a. Each owner or operator must have a contingency plan for the facility. The contingency plan must be designed to minimize hazards to human health or the environment**

from fires, explosions, or any unplanned release of used oil to air, soil, or surface water;

- b. The provisions of the plan must be carried out immediately whenever there is a fire, explosion, or release of used oil which could threaten human health or the environment;

2. Content of Contingency Plan

- a. The contingency plan must describe the actions facility personnel must take to comply with LAC 33:V.4045.B.1 and 6 in response to fires, explosions, or any unplanned release of used oil to air, soil, or surface water at the facility;
- b. If the owner or operator has already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan in accordance with 40 CFR chapter 1 part 112, or 40 CFR chapter V part 1510, or some other emergency or contingency plan, the owner or operator need only amend that plan to incorporate used oil management provisions that are sufficient to comply with the requirements of this Chapter;
- c. The plan must describe arrangements agreed to by local police departments, fire departments, emergency response teams, emergency response contractors, equipment suppliers, and hospitals to coordinate emergency services in accordance with LAC 33:V.4045.A.6;
- d. The plan must list names, addresses, and phone numbers (office and home) of all persons qualified to act as the emergency coordinator (see LAC 33:V.4045.B.5) and this list must be kept up-to-date. Where more than one person is listed, one must be named as primary emergency coordinator and the others must be listed in the order in which they will assume responsibility as alternates;

- e. **The plan must include a list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, internal and external communications and alarm systems, and decontamination equipment), where this equipment may be required. This list must be kept up-to-date. In addition, the plan must include the location and a physical description of each item on the list and a brief outline of its capabilities;**
 - f. **The plan must include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. This plan must describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes (in cases where the primary routes could be blocked by releases of used oil or fires);**
- 3. Copies of Contingency Plan. A copy of the contingency plan and all revisions to the plan must be:**
- a. **maintained at the facility; and**
 - b. **submitted to all local police departments, fire departments, emergency response teams, and hospitals that may be called upon to provide emergency services;**
- 4. Amendment of Contingency Plan. The contingency plan must be reviewed and immediately amended, if necessary, whenever:**
- a. **applicable regulations are revised;**
 - b. **the plan fails in an emergency;**
 - c. **the facility changes its design, construction, operation, maintenance, or other circumstances in such a way that materially increases the potential for fires, explosions, or releases of used oil or changes the response necessary in an emergency;**

- d. the list of emergency coordinators changes; or
- e. the list of emergency equipment changes;

5. **Emergency Coordinator.** At all times, there must be at least one employee either on the facility premises or on call (i.e., available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures. This emergency coordinator must be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location and characteristic of used oil handled, the location of all records within the facility, and facility layout. In addition, this person must have the authority to commit the resources needed to carry out the contingency plan.

Note: The emergency coordinator's responsibilities are more fully spelled out in LAC 33:V.4045.B.6. Applicable responsibilities for the emergency coordinator vary, depending on factors such as the type and variety of used oil handled by the facility and the type and complexity of the facility; and

6. **Emergency Procedures**

- a. Whenever there is an imminent or actual emergency situation, the emergency coordinator (or the designee when the emergency coordinator is on call) must immediately:
 - i. activate internal facility alarms or communication systems, where applicable, to notify all facility personnel; and
 - ii. notify appropriate local agencies that have designated response roles, if their help is needed.
- b. Whenever there is a release, fire, or explosion, the emergency coordinator must immediately identify the character, exact source, amount, and the real extent of any released materials. He may do this by observation,

review of facility records of manifests and, if necessary, chemical analyses.

- c. Concurrently, the emergency coordinator must assess possible hazards to human health or the environment that may result from the release, fire, or explosion. This assessment must consider both direct and indirect effects of the release, fire, or explosion (e.g., the effects of any toxic, irritating, or asphyxiating gases that are generated or the effects of any hazardous surface water run-offs from water containing chemical agents used to control fire and heat-induced explosions).
- d. If the emergency coordinator determines that the facility has had a release, fire, or explosion which could threaten human health or the environment outside the facility, then he must report his findings as follows:
 - i. if his assessment indicates that evacuation of local areas may be advisable, he must immediately notify appropriate local authorities. He must be available to help appropriate officials decide whether local areas should be evacuated; and
 - ii. he must immediately notify the state official designated as the on-scene coordinator for the geographical area. The report must include:
 - (a). name and telephone number of reporter;
 - (b). name and address of facility;
 - (c). time and type of incident (e.g., release, fire);
 - (d). name and quantity of material(s) involved, to the extent known;
 - (e). the extent of injuries, if any; and
 - (f). the possible hazards to human health or the environment outside the facility.

- e. **During an emergency, the emergency coordinator must take all reasonable measures necessary to ensure that fires, explosions, and releases do not occur, recur, or spread to other used oil or hazardous waste at the facility. These measures must include, where applicable, stopping processes and operation, collecting and containing released used oil, and removing or isolating containers.**
- f. **If the facility stops operation in response to a fire, explosion, or release, the emergency coordinator must monitor for leaks, pressure buildup, gas generation, or ruptures in valves, pipes, or other equipment, wherever this is appropriate.**
- g. **Immediately after an emergency, the emergency coordinator must provide for recycling, storing, or disposing of recovered used oil, contaminated soil or surface water, or any other material that results from a release, fire, or explosion at the facility.**
- h. **The emergency coordinator must ensure that, in the affected area(s) of the facility:**
 - i. **no waste or used oil that may be incompatible with the released material is recycled, treated, stored, or disposed of until cleanup procedures are completed;**
 - ii. **all emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed; and**
 - iii. **the owner or operator must notify the administrative authority and appropriate local authorities that the facility is in compliance with LAC 33:V.4045.B.h.i and ii before operations are resumed in the affected area(s) of the facility.**

- i. The owner or operator must note in the operating record the time, date, and details of any incident that requires implementing the contingency plan. Within 15 days after the incident, he must submit a written report about the incident to the administrative authority. The report must include:

- i. name, address, and telephone number of the owner or operator;
- ii. name, address, and telephone number of the facility;
- iii. date, time, and type of incident (e.g., fire, explosion);
- iv. name and quantity of material(s) involved;
- v. the extent of injuries, if any;
- vi. an assessment of actual or potential hazards to human health or the environment, where this is applicable; and
- vii. estimated quantity and disposition of recovered material that resulted from the incident.

§4047. Rebuttable Presumption for Used Oil

- A. To ensure that used oil managed at a processing/re-refining facility is not hazardous waste under the rebuttable presumption of LAC 33:V.4003.B.1.b, the owner or operator of a used oil processing/re-refining facility must determine whether the total halogen content of used oil managed at the facility is above or below 1,000 ppm.
- B. The owner or operator must make this determination by:

1. testing the used oil; or
 2. applying knowledge of the halogen content of the used oil in light of the materials or processes used.
- C. If the used oil contains greater than or equal to 1,000 ppm total halogens, it is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste, which is listed in LAC 33:V.4901. The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste (for example, by using an analytical method from SW-846, Third Edition, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents, which are listed in LAC 33:V.3105. Table 1). EPA Publication SW-846, Third Edition, is available from the Government Printing Office, Superintendent of Documents, Box 371954, Pittsburgh, PA 15250-7954. (202) 512-1800 (document number 955-001-00000-1).
1. The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins if they are processed, through a tolling agreement, to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner or disposed.
 2. The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

§4049. Used Oil Management

Used oil processors/re-refiners are subject to all applicable Spill Prevention, Control, and Countermeasures (40 CFR part 112) in addition to the requirements of this Subchapter. Used oil processors/re-refiners are also subject to the Underground Storage Tanks (LAC 33:XI) standards for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of this Subchapter.

- A. Management Units.** Used oil processors/re-refiners may not store used oil in units other than tanks, containers, or units subject to regulation under LAC 33:V.Chapters 9, 15, 17, 19, 21, 23, 25, 27-29, 31-33, 35, 37, and 43.
- B. Condition of Units.** Containers and aboveground tanks used to store or process used oil at processing and re-refining facilities must:
1. be in good condition (no severe rusting, apparent structural defects or deterioration); and
 2. not be leaking (no visible leaks).
- C. Secondary Containment for Containers.** Containers used to store or process used oil at processing and re-refining facilities must be equipped with a secondary containment system.
1. The secondary containment system must consist of, at a minimum:
 - a. dikes, berms, or retaining walls; and
 - b. a floor. The floor must cover the entire area within the dike, berm, or retaining wall; or
 - c. an equivalent secondary containment system.
 2. The entire containment system, including walls and floor, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.
- D. Secondary Containment for Existing Aboveground Tanks.** Existing aboveground tanks used to store or process used oil at processing and re-refining facilities must be equipped with a secondary containment system.

1. The secondary containment system must consist of, at a minimum:

- a. dikes, berms, or retaining walls; and**
- b. a floor. The floor must cover the entire area within the dike, berm, or retaining wall except areas where existing portions of the tank meet the ground; or**
- c. an equivalent secondary containment system.**

2. The entire containment system, including walls and floor, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

E. Secondary Containment for New Aboveground Tanks. New aboveground tanks used to store or process used oil at processing and re-refining facilities must be equipped with a secondary containment system.

1. The secondary containment system must consist of, at a minimum:

- a. dikes, berms, or retaining walls; and**
- b. a floor. The floor must cover the entire area within the dike, berm, or retaining wall; or**
- c. an equivalent secondary containment system.**

2. The entire containment system, including walls and floor, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

F. Labels

- 1. Containers and aboveground tanks used to store or process used oil at processing and re-refining facilities must be labeled or marked clearly with the words "Used Oil."**
- 2. Fill pipes used to transfer used oil into underground storage tanks at processing and re-refining facilities must be labeled or marked clearly with the words "Used Oil."**

G. Response to Releases. Upon detection of a release of used oil to the environment not subject to the requirements of LAC 33:XI.715 which has occurred after the effective date of the recycled used oil management program in effect in the state in which the release is located, an owner/operator must perform the following cleanup steps:

- 1. stop the release;**
- 2. contain the released used oil;**
- 3. clean up and manage properly the released used oil and other materials; and**
- 4. if necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.**

H. Closure

- 1. Aboveground Tanks. Owners and operators who store or process used oil in aboveground tanks must comply with the following requirements:**
 - a. at closure of a tank system, the owner or operator must remove or decontaminate used oil residues in tanks, contaminated containment system components,**

contaminated soils, and structures and equipment contaminated with used oil, and manage them as hazardous waste, unless the materials are not hazardous waste under LAC 33:V.Subpart 1; and

- b. if the owner or operator demonstrates that not all contaminated soils can be practicably removed or decontaminated as required in LAC 33:V.4049.H.1.a, then the owner or operator must close the tank system and perform post-closure care in accordance with the closure and post-closure care requirements that apply to hazardous waste landfills (LAC 33:V.4501).

2. **Containers.** Owners and operators who store used oil in containers must comply with the following requirements:

- a. at closure, containers holding used oils or residues of used oil must be removed from the site; and
- b. the owner or operator must remove or decontaminate used oil residues, contaminated containment system components, contaminated soils, and structures and equipment contaminated with used oil and manage them as hazardous waste, unless the materials are not hazardous waste under LAC 33:V.Chapters 1, 31, 41, and 49.

§4051. Analysis Plan

Owners or operators of used oil processing and re-refining facilities must develop and follow a written analysis plan describing the procedures that will be used to comply with the analysis requirements of LAC 33:V.4047 and, if applicable, LAC 33:V.4081. The owner or operator must keep the plan at the facility.

A. **Rebuttable Presumption for Used Oil in LAC 33:V.4047.** At minimum, the plan must specify the following:

- 1. whether sample analyses or knowledge of the halogen content of the used oil will be used to make this determination;

2. If sample analyses are used to make this determination:

- a. the sampling method used to obtain representative samples to be analyzed. A representative sample may be obtained using either:**
 - i. one of the sampling methods in LAC 33:V.4901.Appendix D; or**
 - ii. a method shown to be equivalent under LAC 33:V.105.H and I;**
- b. the frequency of sampling to be performed and whether the analysis will be performed on-site or off-site; and**
- c. the methods used to analyze used oil for the parameters specified in LAC 33:V.4047; and**

3. the type of information that will be used to determine the halogen content of the used oil.

B. On-specification Used Oil Fuel in LAC 33:V.4081. At a minimum, the plan must specify the following if LAC 33:V.4081 is applicable:

- 1. whether sample analyses or other information will be used to make this determination;**
- 2. if sample analyses are used to make this determination:**
 - a. the sampling method used to obtain representative samples to be analyzed. A representative sample may be obtained using either:**
 - i. one of the sampling methods in LAC 33:V.4901.Appendix D; or**

- ii. a method shown to be equivalent under LAC 33:V.105.H and I;
 - b. whether used oil will be sampled and analyzed prior to or after any processing/re-refining;
 - c. the frequency of sampling to be performed and whether the analysis will be performed on-site or off-site; and
 - d. the methods used to analyze used oil for the parameters specified in LAC 33:V.4081; and
3. the type of information that will be used to make the on-specification used oil fuel determination.

§4053. Tracking

- A. **Acceptance.** Used oil processors/re-refiners must keep a record of each used oil shipment accepted for processing/re-refining. These records shall take the form of a used oil reuse/recycle manifest obtained from the department. Records for each shipment must include the following information:
 1. the name and address of the transporter who delivered the used oil to the processor/re-refiner;
 2. the name and address of the generator or processor/re-refiner from whom the used oil was sent for processing/re-refining;
 3. the EPA identification number of the transporter who delivered the used oil to the processor/re-refiner;
 4. the EPA identification number (if applicable) of the generator or processor/re-refiner from whom the used oil was sent for processing/re-refining;
 5. the quantity of used oil accepted; and

6. the date of acceptance.

B. Delivery. Used oil processor/re-refiners must keep a record of each shipment of used oil that is shipped to a used oil burner, processor/re-refiner, or disposal facility. These records shall take the form of a used oil reuse/recycle manifest obtained from the department. Records for each shipment must include the following information:

1. the name and address of the transporter who delivers the used oil to the burner, processor/re-refiner, or disposal facility;
2. the name and address of the burner, processor/re-refiner, or disposal facility who will receive the used oil;
3. the EPA identification number of the transporter who delivers the used oil to the burner, processor/re-refiner, or disposal facility;
4. the EPA identification number of the burner, processor/re-refiner, or disposal facility who will receive the used oil;
5. the quantity of used oil shipped; and
6. the date of shipment.

C. Record Retention. The records described in LAC 33:V.4053.A and B must be maintained for at least three years.

§4055. Operating Record and Reporting

A. Operating Record

1. The owner or operator must keep a written operating record at the facility.

2. The following information must be recorded, as it becomes available, and maintained in the operating record until closure of the facility:

- a. records and results of used oil analyses performed as described in the analysis plan required under LAC 33:V.4051; and
- b. summary reports and details of all incidents that require implementation of the contingency plan as specified in LAC 33:V.4045.B.

B. Reporting. A used oil processor/re-refiner must report to the administrative authority, in the form of a letter, on a biennial basis (by March 1 of each even-numbered year), the following information concerning used oil activities during the previous calendar year:

- 1. the EPA identification number, name, and address of the processor/re-refiner;
- 2. the calendar year covered by the report; and
- 3. the quantities of used oil accepted for processing/re-refining and the manner in which the used oil is processed/re-refined, including the specific processes employed.

§4057. Off-site Shipments of Used Oil

Used oil processors/re-refiners who initiate shipments of used oil off-site must ship this oil using a used oil transporter who has obtained an EPA identification number.

§4059. Management of Residues

Owners and operators who generate residues from the storage, processing, or re-refining of used oil must manage the residues as specified in LAC 33:V.4003.E.

Subchapter F. Standards for Used Oil Burners Which Burn Off-specification Used Oil for Energy Recovery

§4061. Applicability

A. General. The requirements of this Subchapter apply to used oil burners except as specified in LAC 33:V.4061.A.1 and 2. A used oil burner is a facility where used oil not meeting the specification requirements in LAC 33:V.4005 is burned for energy recovery in devices identified in LAC 33:V.4063.A. Facilities burning used oil for energy recovery under the following conditions are not subject to LAC 33:V.Chapter 40.Subchapter F:

- 1. the used oil is burned by the generator in an on-site space heater under the provisions of LAC 33:V.4015; or**
- 2. the used oil is burned by a processor/re-refiner for purposes of processing used oil, which is considered burning incidentally to used oil processing.**

Response

Exide does not burn used oil. Therefore, this subchapter is not applicable:

B. Other Applicable Provisions. Used oil burners who conduct the following activities are also subject to the requirements of other applicable provisions of this Chapter as indicated below:

- 1. burners who generate used oil must also comply with LAC 33:V.Chapter 40.Subchapter B;**
- 2. burners who transport used oil must also comply with LAC 33:V.Chapter 40.Subchapter D;**
- 3. burners who process or re-refine used oil must also comply with LAC 33:V.Chapter 40.Subchapter E, except as provided in LAC 33:V.4063.B;**

4. burners who direct shipments of off-specification used oil from their facility to a used oil burner or first claim that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in LAC 33:V.4005 must also comply with LAC 33:V.Chapter 40.Subchapter G; and
 5. burners who dispose of used oil must comply with Chapter 40.Subchapter H.
- C. **Specification Fuel.** This Subchapter does not apply to persons burning used oil that meets the used oil fuel specification of LAC 33:V.4005, provided that the burner complies with the requirements of LAC 33:V.Chapter 40.Subchapter G.

§4063. Restrictions on Burning

- A. **Off-specification used oil fuel may be burned for energy recovery only in the following devices:**
1. industrial furnaces identified in LAC 33:V.4003;
 2. boilers, as defined in LAC 33:V.4003, that are identified as follows:
 - a. industrial boilers located on the site of a facility engaged in a manufacturing process where substances are transformed into new products, including the component parts of products, by mechanical or chemical processes;
 - b. utility boilers used to produce electric power, steam, heated or cooled air, or other gases or fluids for sale; or
 - c. used oil-fired space heaters provided that the burner meets the provisions of LAC 33:V.4015; or
 3. hazardous waste incinerators subject to regulation under LAC 33:V.Chapter 31 or LAC 33:V.Chapter 43.Subchapter N.

- B. With the following exception, used oil burners may not process used oil unless they also comply with the requirements of LAC 33:V.Chapter 40.Subchapter E. Used oil burners may aggregate off-specification used oil with virgin oil or on-specification used oil for purposes of burning, but may not aggregate for purposes of producing on-specification used oil.**

§4065. Notification

- A. Identification Numbers. Used oil burners which have not previously complied with the notification requirements of this Chapter must comply with these requirements and obtain an EPA identification number.**
- B. Mechanics of Notification. A used oil burner who has not received an EPA identification number may obtain one by notifying the administrative authority of their used oil activity by submitting a completed Louisiana Notification of Hazardous Waste Activity Form (HW-1).**
- C. Upon promulgation of this Chapter, used oil burners which burn off-specification used oil for energy recovery and have previously notified must renotify the administrative authority of this used oil activity.**
- D. A used oil burner must notify the administrative authority within seven business days if any of the information submitted in the application for the identification number changes.**

§4067. Rebuttable Presumption for Used Oil

- A. To ensure that used oil managed at a used oil burner facility is not hazardous waste under the rebuttable presumption of LAC 33:V.4003.B.1.b, a used oil burner must determine whether the total halogen content of used oil managed at the facility is above or below 1,000 ppm.**
- B. The used oil burner must determine if the used oil contains above or below 1,000 ppm total halogens by:**

1. testing the used oil;
 2. applying knowledge of the halogen content of the used oil in light of the materials or processes used; or
 3. if the used oil has been received from a processor/ refiner subject to regulation under LAC 33:V.Chapter 40.Subchapter E, using information provided by the processor/re-refiner.
- C. If the used oil contains greater than or equal to 1,000 ppm total halogens, it is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste, which is listed in LAC 33:V.4901. The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste (for example, by using an analytical method from SW-846, Third Edition, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents, which are listed in LAC 33:V.3105.Table 1). EPA Publication SW-846, Third Edition, is available from the Government Printing Office, Superintendent of Documents, Box 371954, Pittsburgh, PA 15250-7954. (202) 512-1800 (document number 955-001-00000-1).
1. The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins if they are processed, through a tolling arrangement as described in LAC 33:V.4017.C to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner or disposed.
 2. The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

- D. Record Retention.** Records of analyses conducted or information used to comply with LAC 33:V.4067.A-C must be maintained by the burner for at least three years.

§4069.Used Oil Storage

Used oil burners are subject to all applicable Spill Prevention, Control, and Countermeasures (40 CFR part 112) in addition to the requirements of this Subchapter. Used oil burners are also subject to the Underground Storage Tank (LAC 33:XI) standards for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of this Subchapter.

- A. Storage Units.** Used oil burners may not store used oil in units other than tanks, containers, or units subject to regulation under LAC 33:V.Chapters 9, 15, 17, 19, 21, 23, 25, 27-29, 31-33, 35, 37, and 43.
- B. Condition of Units.** Containers and aboveground tanks used to store oil at burner facilities must:
1. be in good condition (no severe rusting, apparent structural defects or deterioration); and
 2. not be leaking (no visible leaks).
- C. Secondary Containment for Containers.** Containers used to store used oil at burner facilities must be equipped with a secondary containment system.
1. The secondary containment system must consist of, at a minimum:
 - a. dikes, berms, or retaining walls; and
 - b. a floor. The floor must cover the entire area within the dike, berm, or retaining wall.

2. The entire containment system, including walls and floor, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

D. Secondary Containment for Existing Aboveground Tanks. Existing aboveground tanks used to store used oil at burner facilities must be equipped with a secondary containment system.

1. The secondary containment system must consist of, at a minimum:

- a. dikes, berms, or retaining walls; and
- b. a floor. The floor must cover the entire area within the dike, berm, or retaining wall except areas where existing portions of the tank meet the ground; or
- c. an equivalent secondary containment system.

2. The entire containment system, including walls and floor, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

E. Secondary Containment For New Aboveground Tanks. New aboveground tanks used to store used oil at burner facilities must be equipped with a secondary containment system.

1. The secondary containment system must consist of, at a minimum:

- a. dikes, berms, or retaining walls; and
- b. a floor. The floor must cover the entire area within the dike, berm, or retaining wall; or

c. an equivalent secondary containment system.

2. The entire containment system, including walls and floor, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

F. Labels

1. Containers and aboveground tanks used to store used oil at burner facilities must be labeled or marked clearly with the words "Used Oil."
2. Fill pipes used to transfer used oil into underground storage tanks at burner facilities must be labeled or marked clearly with the words "Used Oil."

G. Response to Releases. Upon detection of a release of used oil to the environment not subject to the requirements of LAC 33:XI.715 which has occurred after the effective date of the recycled used oil management program in effect for the state in which the release is located, a burner must perform the following cleanup steps:

1. stop the release;
2. contain the released used oil;
3. clean up and manage properly the released used oil and other materials; and
4. if necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.

§4071. Tracking

A. Acceptance. Used oil burners must keep a record of each used oil shipment accepted for burning. These records shall take the form of

a used oil reuse/recycle manifest obtained from the department. Records for each shipment must include the following information:

1. the name and address of the transporter who delivered the used oil to the burner;
2. the name and address of the generator or processor/re-refiner from whom the used oil was sent to the burner;
3. the EPA identification number of the transporter who delivered the used oil to the burner;
4. the EPA identification number (if applicable) of the generator or processor/re-refiner from whom the used oil was sent to the burner;
5. the quantity of used oil accepted; and
6. the date of acceptance.

B. **Record Retention.** The records described in LAC 33:V.4071.A must be maintained for at least three years.

§4073. Notices

A. **Certification.** Before a burner accepts the first shipment of off-specification used oil fuel from a generator, transporter, or processor/re-refiner, the burner must provide to the generator, transporter, or processor/re-refiner a one-time written and signed notice certifying that:

1. the burner has notified the administrative authority stating the location and general description of his used oil management activities; and
2. the burner will burn the used oil only in an industrial furnace or boiler identified in LAC 33:V.4063.A.

- B. Certification Retention.** The certification described in LAC 33:V.4073.A must be maintained for three years from the date the burner last receives shipment of off-specification used oil from that generator, transporter, or processor/re-refiner.

§4075. Management of Residues

Burners who generate residues from the storage or burning of used oil must manage the residues as specified in LAC 33:V.4003.E.

Subchapter G. Standards for Used Oil Fuel Marketers

§4077. Applicability

- A. Any person who conducts either of the following activities is subject to the requirements of this Subchapter:**
- 1. directs a shipment of off-specification used oil from their facility to a used oil burner; or**
 - 2. first claims that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in LAC 33:V.4005.**
- B. The following persons are not marketers subject to this Subchapter:**
- 1. used oil generators and transporters who transport used oil received only from generators, unless the generator or transporter directs a shipment of off-specification used oil from their facility to a used oil burner. Processors/re-refiners who burn some used oil fuel for purposes of processing are considered to be burning incidentally to processing. Thus, generators and transporters who direct shipments of off-specification used oil to processor/re-refiners who incidentally burn used oil are not marketers subject to this Subchapter; and**

2. **persons who direct shipments of on-specification used oil and who are not the first person to claim the oil meets the used oil fuel specifications of LAC 33:V.4005.**

Response

Exide is a used oil generator. Exide does not direct any shipments of off-specification used oil from its facility to a used oil burner or does not first claim that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in LAC 33:V.4005. Therefore, this subchapter is not applicable.

- C. **Any person subject to the requirements of this Subchapter must also comply with one of the following:**

1. **LAC 33:V.Chapter 40.Subchapter B;**
2. **LAC 33:V.Chapter 40.Subchapter D;**
3. **LAC 33:V.Chapter 40.Subchapter E; or**
4. **LAC 33:V.Chapter 40.Subchapter F.**

§4079. Prohibitions

A used oil fuel marketer may initiate a shipment of off-specification used oil only to a used oil burner who:

- A. **has an EPA identification number; and**
- B. **burns the used oil in an industrial furnace or boiler identified in LAC 33:V.4063.A.**

§4081. On-specification Used Oil Fuel

- A. **Analysis of Used Oil Fuel. A generator, transporter, processor/re-refiner, or burner may determine that used oil that is to be burned for energy recovery meets the fuel specifications of LAC 33:V.4005 by**

performing analyses or obtaining copies of analyses or other information documenting that the used oil fuel meets the specifications.

- B. **Record Retention.** A generator, transporter, processor/ re-refiner, or burner who first claims that used oil that is to be burned for energy recovery meets the specifications for used oil fuel under LAC 33:V.4005, must keep copies of analyses of the used oil (or other information used to make the determination) for three years.

§4083. Notification

- A. **Identification Numbers.** A used oil fuel marketer subject to the requirements of this Subchapter who has not previously complied with the notification requirements of this Chapter must comply with these requirements and obtain an EPA identification number.
- B. A marketer who has not received an EPA identification number may obtain one by notifying the administrative authority of their used oil activity by submitting a completed Louisiana Notification of Hazardous Waste Activity Form (HW-1) EPA Form 8700-12.
- C. Upon promulgation of this Chapter, used oil fuel marketers who have previously notified must renotify the administrative authority of used oil activity.
- E. A generator must notify the administrative authority within seven days if any of the information submitted in the application for the identification number changes.

§4085. Tracking

- A. **Off-specification Used Oil Delivery.** Any used oil marketer who directs a shipment of off-specification used oil to a burner must keep a record of each shipment of used oil to that used oil burner. These records shall take the form of a used oil reuse/recycle manifest obtained from the department. Records for each shipment must include the following information:

1. the name and address of the transporter who delivers the used oil to the burner;
2. the name and address of the burner who receives the used oil;
3. the EPA identification number of the transporter who delivers the used oil to the burner;
4. the EPA identification number of the burner;
5. the quantity of used oil shipped; and
6. the date of shipment.

B. On-Specification Used Oil Delivery. A generator, transporter, processor/re-refiner, or burner who first claims the used oil that is to be burned for energy recovery meets the fuel specifications under LAC 33:V.4005 must keep a record of each shipment of used oil to the facility to which it delivers the used oil. Records for each shipment must include the following information:

1. the name and address of the facility receiving the shipment;
2. the quantity of used oil fuel delivered;
3. the date of shipment or delivery; and
4. a cross-reference to the record of used oil analysis or other information used to make the determination that the oil meets the specification as required under LAC 33:V.4081.A.

C. Record Retention. The records described in LAC 33:V.4085.A and B must be maintained for at least three years.

§4087. Notices

A. Certification. Before a used oil generator, transporter, or processor/re-refiner directs the first shipment of off-specification used oil fuel to a burner, he must obtain a one-time notice written and signed by the burner certifying that:

- 1. the burner has notified the administrative authority stating the location and general description of his used oil management activities; and**
- 2. the burner will burn the off-specification used oil only in an industrial furnace or boiler identified in LAC 33:V.4063.A.**

B. Certification Retention. The certification described in LAC 33:V.4087.A must be maintained for three years from the date the last shipment of off-specification used oil is shipped to the burner.

Subchapter H. Standards for Disposal of Used Oil and Use as a Dust Suppressant

§4089. Applicability

The requirements of this Subchapter apply to all used oils that cannot be recycled and are therefore being disposed.

§4091. Disposal

A. Disposal of Hazardous Used Oils. Used oils that are identified as a hazardous waste and cannot be recycled in accordance with this Chapter must be managed in accordance with the hazardous waste management requirements of LAC 33:V.Subpart 1.

Response

Exide understands that used oil that is identified as hazardous waste cannot be recycled and must be managed in accordance with the hazardous waste management requirements of LAC 33:V.Subpart 1 and

abide by this regulation. Exide does not generate used oils identified as hazardous waste and does not mix used oil with hazardous waste.

- B. Disposal of Nonhazardous Used Oils.** Used oils that are not hazardous wastes and cannot be recycled under this Chapter must be disposed in accordance with the requirements of LAC 33:VII.

Response

Exide acknowledges this citation and will comply.

§4093. Use as a Dust Suppressant

The use of used oil as a dust suppressant is prohibited.

Response

Exide will not apply used oil as a dust suppressant. Water will be used for dust suppression as indicated in the Dust Suppression Operational Procedure in Appendix 12.



CHAPTER 41

RECYCLABLE MATERIALS

Title 33
ENVIRONMENTAL QUALITY
Part V. Hazardous Waste and Hazardous Materials

Chapter 41. Recyclable Materials

§4101. Applicability

- A. Hazardous wastes that are recycled will be known as "recyclable materials."**

Response

Exide acknowledges the applicability of this section and will comply. Exide reclaims and recycles spent lead-acid batteries and other lead-bearing materials.

- B. A recyclable material is subject to the regulations in this Chapter and other sections as specifically referred to herein.**

Response

Exide acknowledges this section and will comply.

- C. A material which is used for a purpose for which it is manufactured or produced is not a recyclable material for purposes of this Chapter.**

Response

Exide acknowledges this section and will comply.

- D. Upon transport of a recyclable material from the generation site and out of the direct control of the generator, the owner of the recyclable material shall notify the Office of Environmental Compliance by telephone at (225) 763-3908 during office hours; (225) 342-1234 after hours, weekends, and holidays; or by e-mail utilizing the Incident Report Form and procedures found at www.deq.state.la.us/surveillance within 24 hours of any determination that the material shall not be used, reused, or recycled. Following such a determination the recyclable material is no longer considered a recyclable material and is fully subject to all requirements of these regulations.**

Response

Exide acknowledges this section and will comply.

- E. Upon determination by the generator that any material held for use, reuse, or recycle is to be discarded, such material shall no longer be considered a recyclable material and shall be handled as otherwise required in these regulations.

Response

Exide acknowledges this section and will comply.

§4103. Notification

- A. All operators of facilities which generate, transport, treat, store, or utilize or recycle a recyclable material that have not previously notified shall notify the department within 90 days of promulgation of these rules and regulations that they are engaged in activities involving a recyclable material as defined in LAC 33:V.109. For notification, the operator may obtain notification forms from the department.

Response

Exide acknowledges this section and has complied.

§4105. Requirements for Recyclable Material

Recyclable materials are subject to additional regulations as follows:

- A. Hazardous wastes that are recycled are subject to the requirements for generators, transporters, and storage facilities of Subchapter A (Group I) of this Chapter except for the materials listed in Subsections B and C of this Section. Hazardous wastes that are recycled will be known as "recyclable materials."

Response

Exide acknowledges this section and will comply. Exide recycles spent hazardous wastes including lead-acid batteries and other lead-bearing materials. These materials are considered hazardous

by characteristic (D002, D004, D006, D007, D008, D010, D011) or listing (K069).

B. The following recyclable materials (Group II) are subject to the requirements of Subchapter B of this Chapter and all applicable provisions as provided in Subchapter B of this Chapter:

- 1. industrial ethyl alcohol that is reclaimed except that, unless otherwise provided in an international agreement:**

Response

This section does not apply as Exide does not recycle industrial ethyl alcohol.

- a. a person initiating a shipment for reclamation in a foreign country, and any intermediary arranging for the shipment, must comply with the requirements applicable to a primary exporter in LAC 33:V.1113.D, G, and H, export such materials only upon consent of the receiving country and in conformance with the Louisiana State Acknowledgment of Consent as defined in LAC 33:V.1113, and provide a copy of the Louisiana State Acknowledgment of Consent to the shipment to the transporter transporting the shipment for export;**
- b. transporters transporting a shipment for export may not accept a shipment if he knows the shipment does not conform to the Louisiana State Acknowledgment of Consent, must ensure that a copy of the Louisiana State Acknowledgment of Consent accompanies the shipment and must ensure that it is delivered to the facility designated by the person initiating the shipment;**

- 2. Reserved.**

3. Reserved.
4. scrap metal that is not excluded under LAC 33:V.105.D.1.m;

Response.

This section does not apply as Exide does not recycle scrap metal.

5. Reserved.
6. Reserved.
7. Reserved.
8. fuels produced from the refining of oil-bearing hazardous wastes along with normal process streams at a petroleum refining facility if such wastes result from normal petroleum refining production, and transportation practices (this exemption does not apply to fuels produced from oil recovered from oil-bearing hazardous waste, where such recovered oil is already excluded under LAC 33:V.105.D.1.I);

Response

This section does not apply as Exide does not recycle fuels from the refining of oil-bearing hazardous wastes.

9. hazardous waste fuel produced from oil-bearing hazardous wastes from petroleum refining, production, or transportation practices, or produced from oil reclaimed from such hazardous wastes, where such hazardous wastes are reintroduced into a process that does not use distillation or does not produce products from crude oil so long as the resulting fuel meets the used oil specification under LAC 33:V.4005 of this Chapter and so long as no other hazardous wastes are used to produce the hazardous waste fuel;

Response

This section does not apply as Exide does not recycle hazardous waste fuels from petroleum refining.

10. hazardous waste fuel produced from oil-bearing hazardous waste from petroleum refining production, and transportation practices, where such hazardous wastes are reintroduced into a refining process after a point at which contaminants are removed, so long as the fuel meets the used oil fuel specification under LAC 33:V.4005;

Response

This section does not apply as Exide does not recycle hazardous waste fuels from petroleum refining.

11. oil reclaimed from oil-bearing hazardous wastes from petroleum refining, production, and transportation practices, which reclaimed oil is burned as a fuel without reintroduction to a refining process, so long as the reclaimed oil meets the used oil fuel specification under LAC 33:V.4005.

Response

This section does not apply as Exide does not recycle oil reclaimed from oil-bearing hazardous waste.

- C. The following recyclable materials (Group III) are only subject to the requirements of LAC 33:V.Chapter 41.Subchapter C, Chapter 30 and all applicable provisions as provided in LAC 33:V.Chapters 1, 3, 5, 7, 27, 31, and 43:

1. recyclable materials used in a manner constituting disposal;

Response

This section does not apply as Exide does not dispose of recycled materials.

2. **hazardous wastes burned for energy recovery in boilers and industrial furnaces that are not regulated under LAC 33:V.Chapters 31 or 43.Subchapter N;**

Response

This section does not apply as Exide does not burn hazardous waste for energy recovery in boilers and industrial furnaces.

3. **recyclable materials from which precious metals are reclaimed;**

Response

This section does not apply as Exide does not reclaim precious metals from recyclable materials. Exide reclaims lead from sent lead-acid batteries and other lead bearing materials.

4. **spent lead-acid batteries that are being reclaimed; and**

Response

Exide acknowledges this citation and will comply. Exide reclaims and recycles spent lead-acid batteries.

5. **used oil that exhibits one or more of the characteristics of hazardous waste and is burned for energy recovery in boilers and industrial furnaces that are not regulated under LAC 33:V.Chapters 31 or 43.Subchapter N.**

Response

This section does not apply as Exide does not burn used oil for energy recovery. Used oil is sent off-site for recycling in accordance with the Used Oil Plan in Appendix 16.

- D. **The recyclable materials listed in Paragraph D.1 of this Section are subject to all requirements and provisions of Paragraph D.2 of this Section.**

1. Any hazardous waste-derived product produced by any commercial hazardous waste incineration facility that accepts hazardous waste or hazardous waste products for a fee, or any commercial recycling or resource recovery facility that recycles hazardous waste to produce aggregates and that accepts hazardous wastes or hazardous waste products for a fee, provided that such derived product is:

Response

Sections D.1 and D.2 do not apply as Exide does not operate an incinerator.

- a. inherently waste-like;
 - b. accumulated speculatively;
 - c. used as a fuel; or
 - d. used in a manner constituting disposal.
2. Recycling facilities and other entities receiving, handling, shipping, or selling the derived product from the point of production to the ultimate use of the product shall maintain for a period of three years from the date of transaction such records as needed to furnish the following information to the department upon request:
 - a. the name and location of each entity receiving the hazardous waste-derived product. This is to include the names, business addresses, telephone numbers, and functions of all brokers, wholesalers, middlemen, interim purchasers, and all other parties involved in any and all transactions relating to the derived product from the point of production by the recycler to the product's ultimate use;

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Response

Exide acknowledges this requirement and will comply.

- F. Hazardous waste that is exported to or imported from designated member countries of the Organization for Economic Cooperation and Development (OECD) (as defined in LAC 33:V.1113.I.1.a) for the purpose of recovery is subject to the requirements of LAC 33:V.Chapter 11.Subchapter B, if it is subject to either the manifesting requirements of LAC 33:V.Chapter 11 or to the universal waste management standards of LAC 33:V.Chapter 38.

Response

This section does not apply as Exide does not import or export hazardous waste.

§4107. Spills

- A. Any spill of recyclable material which could possibly endanger human health or adversely affect the environment shall be reported to the department as provided in the "Notification Regulations and Procedures for Unauthorized Discharges and Spills." (See LAC 33:I.Chapter 39.)

Response

Exide acknowledges this requirement and will comply. The Spill Prevention Control and Countermeasure Plan is provided in Appendix 14. The plan includes the facility's capability and procedures for taking corrective actions and/or countermeasures when a spill occurs.

- B. If a spill occurs on the site of a generator or a reuse-recycle facility that handles recyclable materials and that spill could endanger the public health or affect the environment offsite, the department and the Department of Public Safety have the authority to enter the site and investigate the spill.

Response

Exide acknowledges this requirement and will comply.

- C. Owners of the spilled material are considered to be generators for the purposes of these regulations. In an emergency situation, all reporting and manifest requirements of these rules and regulations for generators may be suspended. However, the owners of the material must submit a full report on the spill, including location of spill, type of material spilled, cause of spill, amount of spilled material, damages incurred, and how the spilled material was cleaned up, transported, and disposed of. This report shall be forwarded to the Office of Environmental Compliance, Surveillance Division no later than 20 days following the spill.

Response

Exide acknowledges this requirement and will comply.

- D. Whenever a spill of recyclable material occurs that requires immediate removal to protect human health or the environment, the transporter shall immediately notify the Office of Environmental Compliance by telephone at (225) 763-3908 during office hours; (225) 342-1234 after hours, weekends, and holidays; or by e-mail utilizing the Incident Report Form and procedures found at www.deq.state.la.us/surveillance as required by the "Notification Regulations and Procedures for Unauthorized Discharges and Spills." (See LAC 33:I.Chapter 39.)

Response

Exide acknowledges this requirement and will comply.

- E. The generator, transporter, reuse facility, recycle facility, or user shall clean up all of the spilled material or take such action as may be required pursuant to the Emergency Response System so that the spilled material no longer presents a hazard to human health or the environment.

Response

Exide acknowledges this requirement and will comply.

§4109. Violations

- A. No person shall accept any recyclable material unless it is delivered with a properly completed manifest as required by Subchapters A and C of this Chapter or under an Emergency Action Authorization pursuant to LAC 33:V.701.**

Response

Exide acknowledges this requirement and will comply.

- B. No person shall dispose of a recyclable material except by bonafide use, reuse, recycling, or reclamation or by treatment, storage, or disposal as a hazardous waste in accordance with these regulations.**

Response

Exide acknowledges this requirement and will comply.

Subchapter A. Special Requirements for Group I Recyclable Materials

§4111. Applicability

- A. Hazardous wastes that are recycled are subject to the requirements for generators, transporters, and storage facilities except for the materials listed in LAC 33:V.4105.B and C.**

Response

Exide acknowledges this requirement and will comply.

§4113. Generator, Transporter, and Notification Requirements

- A. Generators and transporters of recyclable materials are subject to the applicable requirements of LAC 33:V.Chapters 11 and 13 and the notification requirements of LAC 33:V.105 except as provided in LAC 33:V.4105.B.**

Response

Exide acknowledges this requirement and will comply.

§4115.

**Owners and Operators of Facilities that Store or Recycle
Recyclable Materials**

- A. Owners and operators of facilities that store recyclable materials before they are recycled are regulated under all applicable provisions of LAC 33:V.Chapters 3, 5, 9, 11, 15, 19, 21, 22, 23, 29, 33, 35, 37, and Subchapters A-K of LAC 33:V.Chapter 43 and the notification requirements under LAC 33:V.105.A, except as provided in LAC 33:V.4105.A. (The recycling process itself is exempt from regulations, except as provided in LAC 33:V.4115.C.)**

Response

Exide acknowledges this requirement and will comply.

- B. Owners or operators of facilities that recycle recyclable materials without storing them before they are recycled are subject to the following requirements, except as provided in LAC 33:V.4105.A:**

- 1. notification requirements under LAC 33:V.105.A;**
- 2. LAC 33:V.905 and 907 (dealing with the use of manifest and manifest discrepancies); and**
- 3. LAC 33:V.4115.C.**

Response

Exide acknowledges this requirement and will comply.

- B. Owners or operators subject to LAC 33:V.Subpart 1 permitting requirements with hazardous waste management units that recycle hazardous wastes are subject to the requirements of LAC 33:V.Chapter 17 and Subchapters Q-R of LAC 33:V.Chapter 43.**

Response

Exide acknowledges this requirement and will comply.

Subchapter B. Special Requirements for Group II Recyclable Materials
§4117. Applicability

The requirements of this Subchapter and all applicable provisions as provided in this Subchapter apply to industrial ethyl alcohol that is reclaimed; sludges and by products exhibiting a characteristic of a hazardous waste which are reclaimed. The following wastes are exempt from regulations:

- A. scrap metal;**

Response

This exemption does not apply as Exide does not recycle scrap metal.

- B. fuels produced from the refining of oil-bearing hazardous wastes along with normal process streams at a petroleum refining facility if such wastes result from normal petroleum refining, production, and transportation practices;**

Response

This exemption does not apply as Exide does not recycle fuels produced from the refining of oil-bearing hazardous wastes.

- C. oil reclaimed from hazardous waste resulting from normal petroleum refining, production, and transportation practices, which oil is to be refined along with normal process streams at a petroleum refining facility;**

Response

This exemption does not apply as Exide does not recycle oil reclaimed from hazardous waste.

- D. coke from the iron and steel industry that contains hazardous waste from the iron and steel production process;**

Response

This exemption does not apply as Exide does not recycle coke from the iron and steel industry.

- E. wastes described in LAC 33:V.4105.B.1-14 which are used or reused on-site or stored at the generator site prior to such use or reuse on-site are exempt from these regulations except that on-site storage shall be in an environmentally sound manner;

Response

This exemption does not apply as Exide does not recycle wastes described in LAC 33:V.4105.B.1-14.

- F. used batteries (or used battery cells) returned to a battery manufacturer for regeneration except for storage requirements under LAC 33:V.4119;

Response

Exide understands this exemption for recycling of spent batteries and will comply with applicable regulations.

- G. used oil that exhibits one or more of the characteristics of hazardous waste but is recycled in some manner other than being burned for energy recovery.

Response

This exemption does not apply as Exide does not recycle used oil.

§4119. Storage

- A. Except waste exempt in LAC 33:V.4117 all storage of recyclable materials described in LAC 33:V.4117 shall be in containers or tanks meeting the applicable standards of LAC 33:V.2103, 2105, 2107, 2109.A, 2111, and 2113, LAC 33:V.1903.A-D, 1905, 1907, and 1909 where practical except as otherwise specified in Subchapters A and C of this Chapter. Used batteries or used battery cells returned for manufacturer regeneration may be stored on pallets provided such storage

contains the contents of the batteries or battery cells and is protective of human health and the environment. When it is impractical to store a recyclable material in containers or tanks, or in the manner described for used batteries or used battery cells, alternate storage acceptable to the administrative authority shall be provided by the owner of the material. The storage of all recyclable materials described in LAC 33:V.4117 must be in a manner which will prevent any release of the materials or constituents that would endanger the public health or the environment.

Response

Exide acknowledges this requirement and will comply.

§4121. Manifest Forms and Shipping Documents

- A. Manifest forms containing the information required by this Chapter shall be used for all off-site shipments, except by pipeline, of recyclable material described in LAC 33:V.4117. The manifest form must be obtained from the department.

Response

Exide acknowledges this requirement and will comply.

- B. Recyclable materials described in LAC 33:V.4117 may be collected and manifested on a trip ticket listing with the manifesting requirements fulfilled by the transporter. The listing shall show the identification of the transporter and reuse facility with a listing of the waste collected by identification, quantity, and source, on a form available from or approved by the administrative authority.

Response

Exide acknowledges this requirement and will comply.

- C. Failure to utilize a manifest form for shipments of recyclable materials shall be a violation of LAC 33:V.Subpart 1.

Response

Exide acknowledges this requirement and will comply.

§4123. Manifest Document Flow

- A. The generator initiates the manifest by filling out his or her portion and providing the name, address, telephone number, and active EPA identification number of each transporter, and the name, address, telephone number, and active EPA identification number of the recycling facility that will receive the recyclable material. After the initial transporter signs and dates the manifest accepting the recyclable material, the generator retains one copy for his or her files, mails a copy to the administrative authority of the state where the waste was generated, and the original and remaining copies accompany the recyclable material shipment.

Response

Exide acknowledges this requirement and will comply.

- B. The transporter secures the signature of the operator of the facility that will receive the recyclable material upon delivery of the recyclable material. The transporter retains one copy for his or her files and gives the original and remaining copies to the facility operator.

Response

Exide acknowledges this requirement and will comply.

- C. The facility operator fills out his or her portion, retains a copy for his or her files, submits the original to the department no later than seven days thereafter, and sends all remaining copies to the generator and other appropriate parties no later than seven days after delivery of the recyclable material.

Response

Exide acknowledges this requirement and will comply.

D. If a recycle facility refuses to accept a recyclable material for use, the facility operator must notify the Office of Environmental Services, Environmental Assistance Division immediately and provide the following information:

- 1. name of the person reporting the refusal and phone number for that person;**
- 2. name and address of the transporter;**
- 3. name and address of the generator;**
- 4. name and address of the recycle facility operator;**
- 5. date, time, and place of the refusal;**
- 6. description of the incident; and**
- 7. classification, name, and amount of recyclable material, to the extent available.**

Response

Exide acknowledges this requirement and will comply.

E. The signing of the manifest by the generator, transporter, or facility operator certifies that to the best of his knowledge his portion of the manifest is accurately and correctly filled out. The generator further certifies that the material is properly packaged, marked and labeled and is in the proper container for transportation.

Response

Exide acknowledges this requirement and will comply.

F. The generator, transporter, and facility operator are required to report to the department any irregularities between the

materials actually received and the materials described on the manifest, or any other irregularities, within five days.

Response

Exide acknowledges this requirement and will comply.

- G. For rail shipments, the generator may comply with the requirements of LAC 33:V.1107.D.4 and 5.

Response

This requirement does not apply as Exide does not ship by rail.

§4125. Procedures Governing the Generator's Portion of the Manifest System

- A. Generators of recyclable material shall use a manifest form as required by LAC 33:V.4121.

Response

Exide acknowledges this requirement and will comply. Exide sends shipments of spent nickel-cadmium batteries to separate off-site facilities for recycling.

- B. In naming a recyclable material, a generator shall use the nomenclature for the material which otherwise would be required under these regulations if the material were subject to regulations under LAC 33:V.Chapter 11. Such description of the material shall be used on the material manifest and in all reports on the material required under this Chapter.

Response

Exide acknowledges this requirement and will comply.

- C. A single manifest may be used for multiple loads of recyclable material, provided that:

1. all loads of recyclable material are shipped on the same day from the same location by the same transporter to the same facility;
2. all loads are accompanied by a copy of the manifest and emergency information as required by LAC 33:V.4125;
3. the recyclable material in all loads has the same shipping description and hazard class;
5. the total quantity of each load is specified and is initialed by the generator and transporter; and
6. the operator of the transport vehicle for each load is listed on the manifest.

Response

Exide acknowledges this requirement and will comply.

- D. Generators must provide a Chem-Card or similar emergency card or a statement concerning the hazardous nature of the material and general guidelines for an emergency situation involving the recyclable material to accompany the manifest on shipments and loads.

Response

Exide acknowledges this requirement and will comply.

- E. In naming a recyclable material, a generator shall:

2. use the proper Department of Transportation (DOT) shipping name (identified in 49 CFR 172);
3. if the DOT proper shipping name is "NOT OTHERWISE SPECIFIED" (NOS), then the classification system of LAC 33:V.105.B shall be used after the DOT proper shipping name, "NOS".

Response

Exide acknowledges this requirement and will comply.

- F. If the recyclable material is to be transported out-of-state, the generator will be responsible for receiving the completed, signed manifest from the out-of-state facility.

Response

Exide acknowledges this requirement and will comply.

- G. Generators must obtain written confirmation of the acceptability of the type of recyclable material from the operator of the facility where the material will be used or stored prior to use, before shipping the recyclable material.

Response

Exide acknowledges this requirement and will comply.

§4127. Procedures Governing the Transporter's Portion of the Manifest System

- A. Transporters will pick up and ship only those recyclable materials which are properly prepared for shipment, are accompanied by a properly completed manifest, and appear to be the recyclable material described on the manifest.

Response

As Exide is not a transporter, these requirements do not apply. However, Exide will monitor the transporter to ensure these requirements are satisfied.

- B. Transporters who pick up recyclable material from generators exempted by LAC 33:V.105.B are responsible for the generator manifest requirements of this Section. Transporters may use a single manifest for shipments containing recyclable material from several generators if all generators are listed; all recyclable materials are accurately described, the materials transported in the same shipment are compatible, and the

material is labeled as required in this Section by transportation regulations for hazardous materials promulgated by the Louisiana Department of Public Safety.

Response

As Exide is not a transporter, these requirements do not apply. However, Exide will monitor the transporter to ensure these requirements are satisfied.

- C. If the facility rejects a shipment of recyclable material, the transporter shall return it to the generator, notify the Office of Environmental Services, Environmental Assistance Division of the action immediately, and give reasons to his best understanding why the material was rejected.

Response

As Exide is not a transporter, these requirements do not apply. However, Exide will monitor the transporter to ensure these requirements are satisfied.

§4129. Procedures Governing the Portion of the Manifest System for the Recycle Facility

- A. The operator of a facility accepting out-of-state recyclable materials is responsible for all the requirements of this Section, including requiring the generator to initiate a manifest.

Response

Exide acknowledges this requirement and will comply.

- B. Only those recyclable materials which are properly manifested and properly shipped are to be accepted by the operator of the facility.

Response

Exide acknowledges this requirement and will comply.

- C. If the operator of the facility rejects any recyclable material he is to notify the Office of Environmental Services, Environmental Assistance Division immediately and give reasons for the rejection.**

Response

Exide acknowledges this requirement and will comply.

- D. The operator of any facility that uses or stores a reusable material will assume all the responsibilities of a generator established by these regulations for any recyclable material transported from his facility to another facility, except for material rejected under LAC 33:V.4127.**

Response

Exide acknowledges this requirement and will comply.

§4131. Recordkeeping

- A. Generators, transporters, storers and recyclers that handle recyclable materials shall maintain the required manifests, annual reports and exception reports for a period of three years.**

Response

Exide acknowledges this requirement and will comply.

- B. An annual report shall be submitted by generators, storers and recyclers of recyclable materials and recycle facilities. The reports shall be submitted by March 1 after the end of the calendar year and shall include:**

- 1. materials handled;**
- 2. quantities;**
- 3. physical state; and**

4. for the recyclers, the final utilization or disposition of the recyclable materials.

Response

Exide acknowledges this requirement and will comply.

§4133. Personnel Training

- A. All generators, storers and recyclers shall institute a personnel training program covering all portions of the facility that handle recyclable material.

Response

Exide acknowledges this requirement and will comply. Exide's Training Manual is included in Appendix 13. The Training Manual includes medical surveillance, lockout/tagout, confined space entry, hearing conservation, respiratory protection, powered industrial truck safety, hazard communication, HAZWOPER, the facility's contingency plan, environmental regulations, spill response, work practice training, DOT hazardous materials, sexual harassment, blood borne pathogens, heat stress, fire extinguisher use, incipient fire control, fall protection, slip trip and fall hazard avoidance, proper lifting techniques and back protection.

§4135. Contingency Plan

- A. Each generator, storer and recycler shall prepare a contingency plan, outlining steps to be taken in the case of spills, fires, releases and other emergency situations.

Response

Exide acknowledges this requirement and will comply. Exide's RCRA Contingency Plan and Emergency Response Plan is included in Appendix 6. The Plan includes assignment of duties to personnel, emergency response procedures, types of emergency situations, procedures for plant or unit shutdowns, the alarm system and types and locations of emergency equipment.

Subchapter C. Special Requirements for Group III Recyclable Materials

§4139. Recyclable Materials Used in a Manner Constituting Disposal

A. Applicability

Response

This section does not apply as Exide does not use recyclable batteries in a manner constituting disposal.

1. The regulations of this Section apply to recyclable materials that are applied to or placed on the land without being mixed with any other substance(s) or after being mixed or combined with any other substance(s). These materials will be referred to throughout this Section as "materials used in a manner that constitutes disposal."

Response

This requirement does not apply as Exide does not place recyclable materials on land.

2. Except for the requirements of LAC 33:V:4105.D, products produced for the general public's use that are used in a manner that constitutes disposal and that contain recyclable materials are not presently subject to regulation if:

Response

This section does not apply as Exide does not use recyclable materials in a manner that constitutes disposal.

- a. the recyclable materials have undergone a chemical reaction in the course of producing the products so as to become inseparable by physical means;

- b. such products meet the applicable treatment standards in LAC 33:V.Chapter 22.Subchapter B (or applicable prohibition levels in LAC 33:V.2209 or 2213, where no treatment standards have been established) for each recyclable material (i.e., hazardous waste constituent) that they contain; and
 - c. the product does not exhibit a characteristic of a hazardous waste as specified in LAC 33:V.4903.
- 3. Zinc-containing fertilizers using hazardous waste K061 that are produced for the general public's use are not presently subject to regulation.

Response

This section does not apply as Exide does not manage K061 wastes.

- 4. Commercial fertilizers that are produced for the general public's use that contain recyclable materials also are not presently subject to regulation provided they meet these same treatment standards or prohibition levels for each recyclable material that they contain.

Response

This section does not apply as Exide does not produce commercial fertilizers.

- 5. Anti-skid/de-icing uses of slags, which are generated from high temperature metals recovery (HTMR) processing of hazardous wastes K061, K062, and F006, in a manner constituting disposal are not covered by the exemption in Paragraphs A.2-4 of this Section and remain subject to regulation.

Response

This section does not apply as Exide does not use slags for anti-skid/de-icing uses.

B. General Requirements

1. **Generators and transporters of materials that are used in a manner that constitutes disposal are subject to all the requirements of LAC 33:V.Chapters 11 and 13, and LAC 33:V.105.A of these regulations, and the notification requirement under Section 3010 of RCRA or 105.A.**

Response

This section does not apply as Exide does not use materials in a manner that constitutes disposal.

2. **Owners and operators of facilities that store recyclable materials that are to be used in a manner that constitutes disposal but who are not the ultimate users of the materials are regulated under all applicable provisions of LAC 33:V.Chapters 3, 5, 7, 9, 11, 15, 19, 21, 23, 29, 33, 35, 37; Subchapters A-L of Chapter 43; and the notification requirement under Section 3010 of RCRA or 105.A.**

Response

This section does not apply as Exide does not use materials in a manner that constitutes disposal.

3. **Owners and operators of facilities that use recyclable materials in a manner that constitutes disposal are regulated under all applicable provisions of LAC 33:V.Chapters 3, 5, 7, 9, 11, 15, 19, 21, 22, 23, 25, 27, 29, 31, 33, 35, 37; Subchapters A-M of Chapter 43; and the notification requirement under Section 3010 of RCRA or 105.A. (These requirements do not apply to products which contain these recyclable materials under the provisions of LAC 33:V.4139.A.2.)**

Response

This section does not apply as Exide does not use materials in a manner that constitutes disposal.

4. **The use of waste or used oil or other material that is contaminated with dioxin or any other hazardous waste (other than a waste identified solely on the basis of**

ignitability) for dust suppression or road treatment is prohibited.

Response

Exide acknowledges this requirement and will comply.

§4143. Recyclable Materials Utilized for Precious Metal Recovery

- A. Applicability.** The regulations of this Section apply to recyclable materials that are reclaimed to recover economically significant amounts of gold, silver, platinum, palladium, iridium, osmium, rhodium, ruthenium, and any combination of these.

Response

This section does not apply as Exide does not reclaim recyclable materials for precious metals.

- B. Requirements for Persons who Generate, Transport, or Store Recyclable Materials.** Persons who generate, transport, or store recyclable materials that are regulated under this Section are subject to the following requirements:

1. notification requirements under LAC 33:V.105.A;
2. generators must manifest all loads in accordance with LAC 33:V.1107;
3. transporters must manifest all loads in accordance with LAC 33:V.1307 and 1309;
4. persons who store must manifest all loads in accordance with LAC 33:V.905 and 907;
5. generators are subject to the requirements of Subchapter B of this Chapter; and

6. precious metals exported to or imported from designated OECD member countries for recovery are subject to the requirements of LAC 33:V.Chapter 11.Subchapter B and LAC 33:V.4311. Precious metals exported to or imported from non-OECD countries for recovery are subject to the requirements of LAC 33:V.1113 and 1123.

C. Requirements for Persons who Store Recycled Materials. Persons who store recycled materials regulated under this Section must keep the following records to document that they are not accumulating these materials speculatively:

1. records showing the volume of these materials stored at the beginning of the calendar year;
2. the amount of these materials generated or received during the calendar year; and
3. the amount of materials remaining at the end of the calendar year.

D. Recyclable materials that are regulated under LAC 33:V.4111 that are accumulated speculatively are subject to all applicable provisions of these regulations.

Response

Exide acknowledges this requirement and will comply.

§4145. Spent Lead-Acid Batteries Being Reclaimed

- A. **Applicability.** Are spent lead-acid batteries exempt from hazardous waste management requirements? If you generate, collect, transport, store, or re-generate lead-acid batteries for reclamation purposes, you may be exempt from certain hazardous waste management requirements. Use the following table to determine which requirements apply to you. Alternatively, you may choose to manage your spent lead-acid

batteries under the Universal Waste rule in LAC 33:V.Chapter 38.

If Your Batteries	And If You	Then You	And You
1. will be reclaimed through regeneration (such as by electrolyte replacement);		are exempt from LAC 33:V. Subpart 1 except for LAC 33:V. Chapters 1, 31. Table 1, and 49, and LAC 33:V.1103, and the notification requirements at Section 3010 of RCRA;	are subject to LAC 33:V. Chapters 1, 31. Table 1, and 49 and LAC 33:V.1103.
2. will be reclaimed other than through regeneration;	generate, collect, and/or transport these batteries;	are exempt from LAC 33:V. Subpart 1 except for LAC 33:V.Chapters 1, 31. Table 1, and 49, and LAC 33:V.1103, and the notification requirements at Section 3010 of RCRA;	are subject to LAC 33:V. Chapter 1, 31. Table 1, and 49 and LAC 33:V.1103 and applicable provisions under LAC 33:V.Chapter 22.
3. will be reclaimed other than through regeneration;	store these batteries, but you aren't the reclaimer;	are exempt from LAC 33:V. Subpart 1 except for LAC 33:V.Chapters 1, 31. Table 1, and 49, and LAC 33:V.1103, and the notification requirements at Section 3010 of RCRA;	are subject to LAC 33:V. Chapters 1, 31. Table 1, and 49 and LAC 33:V.1103 and applicable provisions under LAC 33:V.Chapter 22.
4. will be reclaimed other than through regeneration;	store these batteries before you reclaim them;	must comply with LAC 33:V.4145.B and, as appropriate, other regulatory provisions described in LAC 33:V.4145.B;	are subject to LAC 33:V. Chapters 31. Table 1 and 49 and LAC 33:V.1103 and applicable provisions under LAC 33:V.Chapter 22.
5. will be reclaimed other than through regeneration;	don't store these batteries before you reclaim them;	are exempt from LAC 33:V. Subpart 1 except for LAC 33:V. Chapters 1, 31. Table 1, and 49 and LAC 33:V.1103, and the notification requirements at Section 3010 of RCRA;	are subject to LAC 33:V. Chapters 31. Table 1 and 49 and LAC 33:V.1103 and applicable provisions under LAC 33:V.Chapter 22.

Response

Exide acknowledges this requirement and will comply. Exide reclaims spent lead-acid batteries other than through regeneration and may store the batteries before they are reclaimed. Exide will comply with LAC 33:V.4145.B, LAC 33:V.Chapter 31, Table1, LAC 33:V.Chapter 49, LAC 33:V.1103 and applicable provisions of LAC 33:V.Chapter 22.

- B. Requirements. If I store spent lead-acid batteries before I reclaim them, but not through regeneration, which requirements apply? The requirements of this Subsection apply to you if you store spent lead-acid batteries before you reclaim them, but you don't reclaim them through regeneration. The requirements are slightly different depending on your RCRA permit status.**

- 1. For interim status facilities, you must comply with:**

Response

Exide stores spent lead-acid batteries in the Truck/Trailer Storage area and the Whole Battery Storage area. These areas are permitted units and are not subject to interim status; therefore this section does not apply. Only the Containment Building is under interim status, but the Containment Building stores paste, battery components and lead-bearing material in feed piles prior to reclaiming. The Containment Building does not store spent lead-acid batteries.

- a. notification requirements under Section 3010 of RCRA;**
- b. all applicable provisions in LAC 33:V.4301-4306;**
- c. all applicable provisions in LAC 33:V.Chapter 43.Subchapter A, except LAC 33:V.4313 (waste analysis);**
- d. all applicable provisions in LAC 33:V.Chapter 43.Subchapters B and C;**

- e. all applicable provisions in LAC 33:V.Chapter 43.Subchapter D, except LAC 33:V.4353 and 4355 (dealing with the use of the manifest and manifest discrepancies);
- f. all applicable provisions in LAC 33:V.Chapter 43.Subchapters E-K; and
- g. all applicable provisions in LAC 33:V.Chapters 3, 5, and 7.

2. For permitted facilities, you must comply with:

- a. notification requirements under Section 3010 of RCRA;

Response

Exide acknowledges this requirement and will comply. Exide stores spent lead-acid batteries in the Truck/Trailer Storage area and the Whole Battery Storage area. These areas are permitted units and are not subject to interim status.

- b. all applicable provisions in LAC 33:V.1501;

Response

Exide acknowledges this requirement and will comply.

- c. all applicable provisions in LAC 33:V.1503, 1504, 1507, 1509, 1515, and 1517;

Response

Exide acknowledges this requirement and will comply.

- d. all applicable provisions in LAC 33:V.1511 and 1513;

Response

Exide acknowledges this requirement and will comply.

- e. all applicable provisions in LAC 33:V.Chapter 9, but not LAC 33:V.905 or 907 (dealing with the use of the manifest and manifest discrepancies);

Response

Exide acknowledges this requirement and will comply.

- f. all applicable provisions in LAC 33:V.1505, and Chapters 19, 21, 23, 29, 33, 35, and 37; and

Response

Exide acknowledges this requirement and will comply.

- g. all applicable provisions in LAC 33:V.Chapters 3, 5, and 7.

Response

Exide acknowledges this requirement and will comply.



CHAPTER 43

INTERIM STATUS

Currently Exide has interim status for the containment building and receives recyclable materials for storage prior to recycling. Pursuant to Chapter 41, the facility is currently operating under the applicable provisions of Chapter 43 of LHWR. A modification to include the Containment Building in the Hazardous Waste Permit was submitted on October 17, 2001. Exide is responding to LDEQ's comments received on March 18, 2003. Approval of the modification has not yet been received.



CHAPTER 49

LISTS OF HAZARDOUS WASTES

Exide acknowledges the information presented in Chapter 49. Please refer to the Part A Application for the complete list of all hazardous waste with code numbers that are treated, stored disposed at the Baton Rouge smelter.



CHAPTER 51

FEE SCHEDULES

Title 33
ENVIRONMENTAL QUALITY
Part V. Hazardous Waste and Hazardous Materials

Chapter 51. Fee Schedules

§5101. Applicability

- A. The regulations in this Chapter apply to generators of hazardous waste as well as treaters, storers, and disposers of hazardous waste except as provided in LAC 33:V.1101 and LAC 33:V.1501.

Response

Exide acknowledges the applicability of this Chapter and will comply.

§5103. Scope and Purpose

- A. It is the purpose of these regulations to establish a fee system for funding the monitoring, investigation, and other activities required to be conducted for the maintenance of a safe and healthful environment by the Department of Environmental Quality in accordance with the Louisiana Environmental Quality Act (R.S. 30:2014 et seq.). Fees are required for all permits, licenses, registrations, and variances authorized by the Act.

Response

Exide acknowledges this citation and will comply.

§5105. Authority

- A. These regulations provide fees as required by R.S. 30:2014.

Response

Exide acknowledges this citation and will comply.

§5107. Definitions
(See LAC 33:V.109)

Response

Exide acknowledges the definitions and will comply.

§5109. Application Fees
Treaters, Stors, and/or Disposers

- A. A one-time application fee is charged to cover application, evaluation, and other related program costs.**

Response

Exide acknowledges this requirement and will comply.

- B. Each application thereto for which a fee is prescribed shall be accompanied by a remittance in the full amount of the fee. No application or amendments thereto shall be accepted or processed prior to payment of the full amount specified unless approved by the administrative authority. Major amendments of applications for operating permits, closure/post-closure permits, and modifications of permits may be considered as separate applications for purposes of calculating fees.**

Response

Exide acknowledges this requirement and will comply.

§5111. Calculation of Application Fees

- A. The applicant is required to calculate the appropriate application fee, research and development fee, and if applicable, siting fee according to the schedule included in the permit application form. Payment of this fee must be attached to the application.**

Response

Exide acknowledges this requirement and will comply.

B. Application Fee Schedule

Item	Fee
Site analysis—per acre site size	\$ 250 ¹
Process and plan analysis	\$ 1,000
Facility analysis—per facility ²	\$ 500
Management/financial analysis	\$ 1,000

[NOTE: Fee equals total of the four items.]

¹ Up to 100 acres, no additional fee thereafter.

² Incinerator, land farm, treatment pond, etc. each counted as a facility.

Response

Exide has calculated the application fee schedule as follows:

Site Analysis Fee = (\$250/acre) (70.43 acres) = \$17,608

Facility Analysis = (\$500/facility) (5) = \$2,500

(Whole Battery Storage, Truck/Trailer Storage, K060/D008 storage, Containment Building and Slag Stabilization Unit)

Management/Financial Analysis = \$1,000

Total Application Fee = \$21,108

C. Initial Research and Development Fee Schedule

Application Fee x 0.25 = Initial Research and Development Fee

Response

The Baton Rouge Smelter is an existing facility and research and development will not be conducted. This fee does not apply.

D. (Fee per site + fee per facility + fee based on volume) x 0.30 = Administrative Cost Fee

Response

The administrative cost fee is $(\$21,108) (0.30) = \$6,332$.

- E. **Siting Fee.** This fee will be applicable to new commercial hazardous waste treatment, storage, and disposal facilities. This fee will be used to assess the impact of the location of the facility on the citizens in the surrounding area, the local infrastructure, and on the environment. A portion of this fee shall be allocated to the local governmental subdivision for the preparation of an infrastructure assessment report as determined by the secretary. When siting a commercial facility, the secretary shall determine whether the local governmental subdivision should be compensated for any reasonable and necessary cost for preparation of the infrastructure report:
- Application Fee x 0.05 = Siting Fee**

Response

Exide is not proposing a new hazardous waste treatment, storage or disposal facility; therefore this fee does not apply.

§5113. Provision for Collection of Additional Fees Should Application Fees Paid be Less Than Program Costs

- A. Operators who paid an application fee of \$15,000 will be assessed an additional fee equaling the deficit, apportioned equally, provided that no operator pays more than the calculated fee of LAC 33:V.5111.

Response

Exide acknowledges this requirement and will comply.

§5115. Provision of Funds Collected in Excess of Program Costs

- A. Excess funds over program cost generated by this fee shall be credited to the following year's budget.

Response

Exide acknowledges this requirement and will comply.

§5117. Annual Monitoring and Maintenance Fees—Treaters, Storers, and/or Disposers

- A. All annual fees provided by this Chapter shall be paid within 30 days from receipt of billing.**

Response

Exide acknowledges this requirement for annual fees and will comply.

§5119. Calculation of Annual Maintenance Fees

Formula to apportion fees:

Annual Maintenance Fee = fee per site + fee per facility + fee based on volume + annual research and development fee + administrative cost fee + land disposal prohibitions fee + groundwater protection annual fee + incineration inspection and monitoring fee + boiler/industrial furnace inspection and monitoring fee + annual landfill inspection and monitoring fee + annual land treatment unsaturated zone monitoring inspection fee.

Response

Exide acknowledges this requirement for annual fees and will comply.

A. Fee per site:

Off-Site Disposer (Commercial) \$79,800

Reclaimer (compensated for waste removed) \$35,000

Reclaimer (uncompensated for waste removed or pays for waste removed) \$25,000

Off-Site Disposer (Non-commercial) \$20,000

On-Site Disposer \$10,000

[NOTE: The higher fee for off-site disposal is due to the cost of the manifest system and emergency response to transport spills (neither cost is applicable to on-site disposers).]

Response

Exide acknowledges this section and is a reclaimer (uncompensated for waste removed or pays for waste removed) with an annual fee of \$25,000.

B. Fee per Hazardous Waste Facility Type

Unit Type	Fee
Storage Container/Tank/Waste Pile/etc.	\$ 3,273
Treatment Incinerator/Boiler/Industrial Furnace/Filtration Unit/etc.	\$ 5,270
Disposal Landfill/Miscellaneous Unit/etc.	\$ 8,270

Response

Exide has the following storage units:

Truck/Trailer Storage Area	\$3,273
Whole Battery Storage Area	\$3,273
K069/D008 Storage Area	\$3,273
Containment Building	\$3,273

Exide has the following treatment units:

Slag Stabilization Unit	\$5,270
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Exide has the following disposal units:

Closed Haz. Waste Pile #1	\$8,270
Closed Haz. Waste Pile #2	<u>\$8,270</u>

Total \$34,902

C. Fee Based on Volume

Less than 1,000 tons	\$ 1,952
Less than 10,000 tons	\$ 4,904
Less than 100,000 tons	\$ 7,856
Less than 1,000,000 tons	10,808
More than 1,000,000 tons	13,760

Response

Exide manages 396,250 tons per year. The fee is \$10,808.

D. Annual Research and Development Fee

(Fee per site + fee per facility + fee based on volume) x 0.25 = annual research and development fee

Response

The Baton Rouge Smelter is an existing facility and does not conduct research and development. This fee does not apply.

E. Administrative Cost Fee

(Fee per site + fee per facility + fee based on volume) x 0.30 = Administrative Cost Fee

Response

Exide has calculated the annual administrative fee as follows:

Site Fee	(\$25,000) 0.30
Facility Fee	(\$34,902) 0.30
Volume Fee	(\$10,808) 0.30
Total Administrative Fee	(\$70,710) 0.30 = \$21,213

F. Land Disposal Prohibitions Fee. Treatment, processing (including use, reuse, recycling), and/or disposal facility annual fee (not on storage facilities). This fee applies to facilities handling wastes subject to the land disposal prohibitions in LAC 33:V.Chapter 22.

On-Site	\$1,000
Off-Site Non-commercial	\$2,000
Reclaimer	\$2,500
Off-Site Commercial	\$5,000

Response

Exide does not land dispose waste; therefore this fee does not apply.

- G. Groundwater Protection Fee (applies only to sites with groundwater monitoring) in accordance with LAC 33:V.5139.**

Response

Exide acknowledges this requirement and will comply.

- H. Incinerator and Boiler/Industrial Furnace Inspection and Monitoring Fee in accordance with LAC 33:V.5141.**

Response

Exide does not operate an incinerator or boiler/industrial furnace; therefore this fee does not apply.

- I. Annual Landfill Inspection and Monitoring Fee in accordance with LAC 33:V.5143.**

Response

Exide does not operate a hazardous waste landfill; therefore this fee does not apply.

- J. Annual Land Treatment Unsaturated Zone Monitoring Inspection Fee in accordance with LAC 33:V.5145.**

Response

Exide does not conduct land treatment; therefore this fee does not apply.

§5120. Land Disposal Prohibition Petition Fees

- A. Petitions submitted in accordance with R.S. 30:2193(E)(2) and/or LAC 33:V.Chapter 22 are subject to additional fees as noted below for each petition submitted. These fees must be submitted at the time a petition is submitted.**

Response

Exide does not land dispose of hazardous waste; therefore this fee does not apply.

Variance	\$10,000
Exemption	45,000
Extension	5,000
No-Alternatives Determinations	
Original Petition	10,000
Renewal Petition/Request	10,000
Request for determination for addition of a hazardous waste(s) not covered by existing determination	1,000

§5121. Generators of Hazardous Waste

- A. All generators of hazardous waste must file or have on file a notification of that facility, using Notification Form HW-1 available from the administrative authority (See LAC 33:V.303.A).

Response

Exide acknowledges this citation and will comply.

- B. For generators of hazardous waste, the Notification Form HW-1 shall be deemed a registration upon acceptance and approval by the administrative authority.

Response

Exide acknowledges this citation and will comply.

§5123. Registration Fees, HW-1

- A. An initial registration fee is charged for each generator, transporter, or TSD facility obtaining an EPA Identification

Number from the department. There is no fee for modifying an existing registration based on any change of information submitted on Notification Form HW-1.

Initial Fee \$9.46

Response

The Baton Rouge Smelter has already obtained an EPA identification number and this fee does not apply.

§5125. Annual Monitoring and Maintenance Fee

- A. Fee will annually be \$283.65, plus the prohibited waste fee.**

Response

Exide acknowledges this fee and will comply.

- B. Annual prohibited waste fee is \$100 for each generator who generates for land disposal as provided in LAC 33:V.Chapter 22. The generator will be subject to this fee if any waste generated is prohibited from disposal at any time during the year for which the fee is assessed.**

Response

Exide does not generate for land disposal; therefore this fee does not apply.

- C. All annual fees provided by this Chapter shall be paid by the due date indicated on the invoice.**

Response

Exide acknowledges this requirement and will comply.

§5127. Payment

- A. All fee payments shall be made by check, draft, or money order payable to the Department of Environmental Quality and mailed to the department at the address provided on the invoice.**

Response

Exide acknowledges this requirement and will comply.

§5129. Late Payment Fee

- A. Payments not received within 15 days of the due date will be charged a late payment fee. Any late payment fee shall be calculated from the due date indicated on the invoice.**

Response

Exide acknowledges this requirement and will comply.

- 1. Payments not received by the department by the fifteenth day from the due date will be assessed a five percent late payment fee on the original assessed fee.**
- 2. Payments not received by the department by the thirtieth day from the due date will be assessed an additional five percent late payment fee on the original assessed fee.**
- 3. Payments not received by the department by the sixtieth day from the due date will be assessed an additional five percent late payment fee on the original assessed fee.**

§5131. Failure to Pay

- A. Failure to pay the prescribed application fee or annual fee as provided herein, within 90 days after the due date, will constitute a violation of these regulations and shall subject the person to applicable enforcement actions under the act including, but not limited to, revocation or suspension of the applicable permit, license, registration, or variance.**

Response

Exide acknowledges this requirement and will comply.

§5133. Effective Date

- A. The application fees prescribed herein shall be required for all applications filed on or after these fee regulations are published in the *Louisiana Register* as adopted.**

Response

Exide acknowledges this requirement and will comply.

- B. The annual fees prescribed herein shall be effective for the state fiscal year in which these fee regulations are published in the *Louisiana Register* as adopted and each state fiscal year thereafter. Fees submitted to the department in accordance with previous fee regulations for the state fiscal year in which these fee regulations are published in the *Louisiana Register* as adopted shall be credited against the fees and due and payable under these fee regulations.**

Response

Exide acknowledges this requirement and will comply.

§5135. Transporter Fee

- A. All transporters of hazardous waste with a facility in Louisiana shall pay a fee of \$200 per year to the department. There will be only one fee regardless of the number of vehicles in the service of the transporter.**

Response

Exide is not a waste transporter and this fee does not apply.

- B. All transporters of hazardous waste which do not have a facility in Louisiana shall pay a fee of \$10 per vehicle when traveling through or into the state.**

Response

Exide is not a waste transporter and this fee does not apply.

§5136. Manifest Form Fee

These fees cover the costs associated with printing, handling, data entry, and other administrative activities.

- A. The fee for manifest forms acquired according to LAC 33:V.1107.A.9 and LAC 33:V.Chapter 40 shall be \$1.50 per form.**

Response

Exide is acknowledges this requirement and will comply.

- B. The fee for continuation sheets acquired according to LAC 33:V.1107.A.9 shall be \$2.50 per form.**

Response

Exide is acknowledges this requirement and will comply.

§5137. Conditionally Exempt Small Quantity Generator Fee

- A. Conditionally exempt small quantity generators: (see LAC 33:V.108) shall pay a fee of \$50 per year to the department.**

Response

Exide is not a small quantity generator and this fee does not apply.

§5139. Groundwater Protection Permit Review Fee

- A. Permit Review Fee. This fee covers the cost of reviewing permits for geology, geotechnical design, and groundwater protection aspects.**

**Hazardous Waste Facilities \$ 5,000 each
(1 time)**

Permit Modifications
Class 1 and 2 \$ 200 each
Class 3 \$ 750 each

Solid Waste Facilities
(1 time) \$ 5,000 each

Permit Modifications

Major	\$ 500 each
Minor	\$ 200 each

Response

Exide is not submitting a groundwater protection permit for review; therefore this fee does not apply. Exide conducts a groundwater detection monitoring program in accordance with an existing Post-Closure Permit for the hazardous waste piles.

- B. Oversight of Abandonment Procedures.** This fee covers the cost of reviewing plans to plug and abandon all permitted groundwater monitoring systems (monitoring wells, piezometers, observations wells, and recovery wells) to ensure that they do not pose a potential threat to groundwater.

Casing pulled	\$ 100 each
Casing reamed out	\$ 200 each
Casing left in place	\$ 500 each

Response

Exide is not proposing to abandon any wells; therefore this fee does not apply.

- C. Groundwater Monitoring Systems Installation Permit.** This fee covers the cost of reviewing the geology and design of proposed groundwater monitoring systems to ensure compliance with department specifications for units subject to permitting under these regulations.

Each Well	\$ 500
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Response

Exide is not proposing to install a groundwater monitoring system; therefore this fee does not apply.

- D. Groundwater Monitoring Systems Inspection Fee (Annual).** This fee covers the cost of inspecting monitoring systems for units subject to permitting under these regulations, to ensure

that they are functioning properly and continue to maintain their integrity.

Each Well

\$ 250

Response

Exide does not maintain a groundwater monitoring system under this hazardous waste permit. Exide does maintain a detection monitoring system under the Post-Closure Permit for the hazardous waste piles.

§5141. Incinerator and Boiler/Industrial Furnace Inspection and Monitoring Fee

- A. Trial Burn or Test Burn Observer Fee.** This is a special fee charged at a daily rate to cover the cost to the department of providing and placing on site a regulatory observer team during incinerator trial burns, boiler/industrial furnace trial burns or other types of test burns required by regulations or the administrative authority when an observer team is required by regulations, specified by permit conditions, or considered necessary to ensure that human health and the environment are adequately protected.

Response

Exide does not conduct trial burns; therefore this fee does not apply.

- 1. This fee will be \$500 for each day of the test burn or trial burn.**
- 2. This fee will be billed following completion of the trial burn or test burn and must be paid by the due date indicated on the invoice.**

- B. Annual Monitoring and Maintenance Fee for Incinerators, Boilers, Industrial Furnaces and Commercial Recycling Furnaces.** This is an annual fee applied to defray the cost to the Hazardous Waste Division of annually inspecting the required continuous monitors and recording devices for each incinerator, boiler or industrial furnace to determine whether they are being properly maintained and calibrated.

This fee will annually be a flat \$1,000.

Response

Exide does not operate incinerators, boilers, industrial furnaces or commercial recycling furnace; therefore this fee does not apply.

§5143. Annual Landfill Inspection and Monitoring Fee

- A. An annual fee shall be charged for the inspection of the regulatory requirement for leak detection and leachate collection systems associated with hazardous waste landfills to determine operational status and degree of proper maintenance.

For each landfill unit or cell with a separate leak detection and leachate collection system, the annual fee will be \$100.

Response

Exide does not maintain landfills; therefore this fee does not apply.

§5145. Annual Land Treatment Unsaturated Zone Monitoring Inspection Fee

- A. Semiannual Zone of Incorporation (ZOI) Inspection Fee. This fee covers the cost of inspection and random sampling and laboratory analysis of the zone of incorporation.

ZOI soil samples	\$1,000 each
Soil-pore liquid monitors (Lysimeters)	acre \$2,500 each monitor

Response

Exide does not operate land treatment units; therefore this fee does not apply.

- B. Annual Land Treatment Unit Report Review Fee. This fee covers the cost of reviewing the report required by final permits for land treatment.

Included in the annual land treatment unit report are the results of the unsaturated zone monitoring. Included are the

semiannual soil core sample analyses and the quarterly soil-pore liquid quality analyses from below the treatment zone. Also included are soil moisture tensiometer readings of the ZOI.

Hazardous Waste Facilities \$1,000 each report

Response

Exide does not operate land treatment units; therefore this fee does not apply.

- C. Permit Review Fee. This fee covers the cost of reviewing permits for geology, geotechnical design, and hydrological separation requirements of these regulations.**

Initial Permit \$5,000 each

Permit Modifications

Class 1 \$ 200 each

Class 2 and 3 \$ 750 each

Response

Exide does not operate land treatment units; therefore this fee does not apply.



CHAPTER 53

MILITARY MUNITIONS

Exide acknowledges the information presented in Chapter 53. Exide does not recycle military munitions as a part of their regular operations. Therefore, this chapter is not applicable.